



International Oil Pollution
Compensation Funds

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STOPIA 2006 and TOPIA 2006

Review of Agreements

Submitted by the International Group of P&I Associations

Summary:	STOPIA 2006 & TOPIA 2006 contain identical review clauses that provide for a review of 1992 Civil Liability Convention (1992 CLC) and 1992 IOPC Fund claims data from the period 20 February 2006 to 20 February 2016. This review has now been undertaken following the initiative of the International Group of P&I Associations (International Group) and in conjunction with the 1992 IOPC Fund Secretariat and the Oil Companies International Marine Forum (OCIMF). The results of the review, and the subsequent approach to be taken, are contained in this document.
Action to be taken:	<u>1992 Fund Assembly</u> Information to be noted.

1 Introduction

- 1.1 It will be recalled that the governing bodies noted at the October 2015 IOPC Funds' session of the governing bodies that a review of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006) and the Tanker Oil Pollution Indemnification Agreement (TOPIA 2006) would be carried out in 2016 based on the claims experience in the ten year period from the entry into force of these two Agreements (paragraph 4.4.5 of document [IOPC/OCT15/11/1](#)).
- 1.2 The International Group initiated this review at the start of 2016 and invited the IOPC Funds' Secretariat and the Oil Companies International Marine Forum (OCIMF) to participate in the review as prescribed in Clauses VIII (B) of the two Agreements.
- 1.3 In accordance with Clauses VIII (A) of the Agreements, the International Group and IOPC Funds' Secretariats shared claims data on the experience of claims for pollution damage in the ten years from 20 February 2006 to 20 February 2016 in order to (1) establish the approximate proportions in which the overall cost of such claims under the 1992 CLC and the 1992 Fund Convention have been borne respectively by shipowners and by oil receivers in this period and (2) to consider the efficiency, operation and performance of the Agreements.
- 1.4 The outcome of this claims data sharing exercise is contained in this submission.

2 Background

- 2.1 STOPIA 2006 and TOPIA 2006 were both agreed in 2006 to reflect the desire of shipowners to support efforts to ensure the continuing success of the international oil pollution compensation regime. At the time, the 1992 Fund had been engaged in a comprehensive review of the system. STOPIA 2006 and TOPIA 2006 also reflected the commitment given by shipowners to put in place binding contractual schemes to ensure that the overall costs of claims falling within this system is shared equally with oil receivers and to encourage the widest possible ratification of the Supplementary Fund Protocol, recognising the potential additional burden imposed by the Protocol on receivers of oil.
- 2.2 STOPIA 2006 provides for shipowners to make payments to the 1992 Fund which are designed to adjust the financial effect of the limitation of liability provisions in the 1992 CLC. STOPIA 2006 reflects the fact that the 1992 CLC provides for the limit of liability of the shipowner to be calculated by reference to the tonnage of the ship, subject to a minimum of SDR 4.51 million for ships of 5 000 gross tonnage or less. Given that the 1992 Fund pays compensation where claims exceed the 1992 CLC limit, STOPIA 2006 was developed on the basis that incidents involving small tankers may result in the 1992 Fund bearing a relatively high proportion of the compensation payable, and paying compensation in a larger number of incidents that would be the case if the minimum limit under the 1992 CLC were higher. STOPIA 2006 therefore provides for the owner of a ship involved in an oil pollution incident in a 1992 Fund State party to reimburse the 1992 Fund for any compensation it pays as a result of the ship's liability limit under the 1992 CLC being less than SDR 20 million. In practice, this would be undertaken by an owner's P&I Club given the direct action liability provisions against the owner's provider of financial security as contained in the 1992 CLC. That amount is equivalent to the liability limit under the 1992 CLC for a ship of 29 548 gross tonnage. STOPIA 2006 therefore re-apportions the ultimate cost of oil spills involving ships up to that size.
- 2.3 TOPIA 2006 provides for shipowners to indemnify the Supplementary Fund for 50% of the compensation it pays under the Supplementary Fund Protocol for pollution damage caused by tankers in Protocol States.
- 2.4 To date, there has been one STOPIA 2006 case (*Solar I*) and no TOPIA 2006 cases (on account of the fact that there have been no cases that have engaged the Supplementary Fund).

3 STOPIA 2006 & TOPIA 2006 reviews

- 3.1 Two meetings have been held with the IOPC Funds' Secretariat (with OCIMF attending the first meeting) to discuss the undertaking of the review and to share the claims data obtained on 1992 CLC and 1992 Fund cases in the ten-year period from 20 February 2006 to 20 February 2016.
- 3.2 The data collected is presented as follows:
- Number of cases involving shipowners/International Group Clubs: 348
 - A total cost paid to date by shipowners International Group Clubs in these cases: US\$ 256 810 499.09
 - Number of cases involving the 1992 IOPC Fund: 2
 - A total cost paid to date by the 1992 IOPC Fund in these cases: US\$ 41 777 445.00
- 3.3 Whilst the difference in the figures are quite stark, it is not surprising that the 1992 Fund has only been engaged in a small number of cases compared with the IG Clubs given that the 1992 Fund is generally only involved in large spills. It should also be noted that the review only encompassed incidents involving vessels entered for P&I cover with an International Group Club and did not

include incidents involving vessels entered for P&I cover with a non-International Group P&I provider or vessels that had no financial security in place.

3.4 The review only covered claims actually paid during this ten-year period. Insofar as the P&I Clubs which are members of the International Group (International Group Clubs) or the 1992 Fund may have exposure to claims arising from incidents that occurred during the review period but which have not yet been paid, no allowance for such exposure has been included in the review figures.

3.5 The actual percentage proportions paid by the respective parties from the total aggregate of all payments made by both parties in this above mentioned number of cases during this ten-year time period is:

- Shipowners/International Group Clubs: 86%
- 1992 IOPC Fund: 14%.

4 STOPIA 2006 & TOPIA 2006 review Clauses – measures to be taken

4.1 Both STOPIA 2006 and TOPIA 2006 provide that where either party has borne a proportion exceeding 60% of the overall cost then measures are to be taken to adjust the financial burden with the objective of maintaining an approximately equal apportionment (Clauses VIII (C)). Such measures may then include those listed in STOPIA 2006 and TOPIA 2006, as follows:

- (i) Amendment of the Agreements to provide for an increase or reduction in the amount of indemnification payable under the Agreements;
- (ii) amendment of the Agreements to improve its efficiency, operation and performance;
- (iii) the conclusion or amendment of any other contractual agreement relating to the apportionment of the cost of oil pollution between shipowners and oil receivers, and
- (iv) any other measure or measures considered appropriate for the purpose of maintaining an approximately equal apportionment.

4.2 Clauses VIII (C) of both Agreements are clear in that measures shall be taken to adjust the financial burden where an imbalance has arisen to the extent that one party has paid more than 60% of the overall cost of claims arising in the review period.

4.3 The review clearly highlights that shipowners/International Group Clubs have indeed paid more than 60% in this period, having paid 86% of all 1992 CLC/1992 Fund claims. Therefore, according to the Agreements, measures are to be taken to address this imbalance.

4.4 It will be recalled that this prescribed approach in the Agreements had been noted by the tenth extraordinary session of the 1992 Fund Assembly in March 2006 (paragraph 13.9 of document [92FUND/A/ES.10/18](#)).

4.5 It will be further recalled that the main framework for the implementation of STOPIA 2006 and TOPIA 2006 is laid down in the Memorandum of Understanding between the 1992 Fund and the Supplementary Fund, and the International Group, signed on 19 April 2006 and which is reproduced at the Annex of document [92FUND/A/ES.11/6](#) and [SUPPFUND/A/ES.3/5](#).

4.6 However, the *Hebei Spirit* case is the only significant incident that engaged the 1992 Fund in the review period and that, whilst the shipowner's limit of liability in this case was the maximum under the 1992 CLC, the 1992 Fund is also faced with an exposure that represents the total amount of compensation available under the 1992 Fund Convention.

4.7 The International Group recognises that the data collated during the review only includes the payments made in the *Hebei Spirit* case within the review period itself, and that the vast majority of the Fund's payments will therefore be taken into account in the next review, which may well redress the above mentioned imbalance.

5 International Group position

5.1 Based on the above, and notwithstanding the definitive nature of Clause VIII (C) in stipulating that measures should be taken under the current circumstances in order to adjust the financial burden that has fallen on shipowners/International Group Clubs in the payment of claims during the review period, the International Group has decided on this occasion, following consultation with the relevant shipowner representative bodies (ICS and Intertanko), not to implement any of the measures referred to in Clause VIII (C).

5.2 The International Group notes however the future reviews that will be undertaken in this regard in accordance with Clause VIII (A) of the Agreements. The International Group retains the right to consider any such measures if any future review reveals any such imbalances that fall within the scope of Clauses VIII (C) and (E) of the Agreements, i.e. that owners/Clubs have borne a proportion exceeding 55% or 60% of the overall costs referred to in Clauses VIII (A).

6 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to take note of the information contained in this document.
