



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 6	IOPC/APR13/6/2	
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1992 Fund Executive Committee	92EC58	
1971 Fund Administrative Council	71AC30	
1992 Fund Working Group 6	92WG6/5	•
1992 Fund Working Group 7	92WG7/2	

THE FUNDING OF INTERIM PAYMENTS

Submitted by the International Group of P&I Associations

Summary:	<p>Since the October 2012 meeting of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, the International Group of P&I Associations (International Group) and the Director of the IOPC Funds have continued to liaise in order to seek an agreement on the concerns raised by the International Group in the sixth intersessional Working Group on the funding of interim payments.</p> <p>Despite this constructive engagement, no agreement has yet been reached.</p>
Action to be taken:	<p><u>1992 Fund sixth intersessional Working Group</u></p> <p>Information to be noted.</p>

1 **Introduction/Background information**

- 1.1 The concerns raised by the International Group on the issue of the funding of interim payments, and the possible overpayment of claims faced by P&I Clubs as a consequence of making interim payments, particularly when there is a risk of admissible claims exceeding the maximum available compensation, have been discussed extensively within the sixth intersessional Working Group.
- 1.2 Possible solutions have been presented to the sixth intersessional Working Group for consideration. Unfortunately, no such solution has yet been reached that would solve the concerns raised by both parties. This also remains the case with regard to proposals that have been discussed intersessionally with the Director of the IOPC Funds.
- 1.3 The International Group remains open to further discussions with the Director.

2 **Possible outcome of the debate on the funding of interim payments**

- 2.1 The International Group has previously informed the Working Group that overcoming the risk of overpayment can normally be met by simply following the procedures set down in the 1992 Civil Liability Convention (1992 CLC) and establishing a limitation fund for distribution as the court sees fit.
- 2.2 It has been mentioned in the Working Group on a number of occasions that the International Group should provide evidence of cases where the risk of overpayment has been a problem and has prevented the Club concerned from making interim payments at an early stage in the claims payment process.
- 2.3 Such evidence has been provided verbally by the International Group on previous occasions and is also contained in document [IOPC/OCT09/10/1](#) submitted by the International Group. The *Prestige* and the *Hebei Spirit* provide evidence of two such cases.

- 2.4 As a result of the high risk that any interim payments made by the Club in the *Prestige* case would not be taken into account by the Spanish courts when a fund was established and distributed under the 1992 CLC, with the result that the Club might eventually pay double the limitation amount, the Club followed the procedures set down in the 1992 CLC and established a limitation fund for distribution by the court.
- 2.5 In the *Hebei Spirit*, the Club only started to make interim payments for the full amount of assessed claims, and agreed to continue making such payments until they reached the 1992 CLC limit, once an agreement had been reached between the Club, shipowner and the Korean Government whereby the Government undertook to provide the funds required for payment into court if that became necessary, and also to ensure that all claimants received 100% of their assessed claims.
- 2.6 It remains uncertain that other governments would be in a position to follow this approach in future similar cases.
- 2.7 Evidence has therefore been provided by the International Group that highlights the real risk of overpayments in previous CLC/Fund cases.
- 2.8 Whilst the International Group fully appreciates that an approach following the procedures set down in the 1992 CLC to establish a limitation fund for distribution as the court sees fit could result in the funds that the Club provides being unavailable to claimants until a considerable time after the incident, there will be a greater probability that International Group Clubs will follow this approach in future cases.

3 Action to be taken

1992 Fund sixth intersessional Working Group

The 1992 Fund sixth intersessional Working Group is invited to take note of the information contained in this document.
