



LEGAL COMMITTEE
96th session
Agenda item 6

LEG 96/6/2
28 August 2009
Original: ENGLISH

**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER
OIL POLLUTION DAMAGE, 2001: IMPLEMENTATION OF THE CONVENTION**

Submitted by the International Group of P & I Associations (P & I Clubs)

SUMMARY

<i>Executive summary:</i>	The claims data requested by the Committee on pollution damage claims arising from a spill, or the threat of a spill, from a ship's bunker oil indicates that the total cost of claims for such pollution damage in each reported incident has exceeded the limits of liability contained in the 1996 LLMC Protocol in only a small number of cases
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.1.1
<i>Planned output:</i>	None
<i>Action to be taken:</i>	Paragraph 17
<i>Related documents:</i>	LEG 95/5 and LEG 94/11/1

Background

1 In response to a request from the delegation of Japan at the ninety-fourth session of the Legal Committee, the International Group of P & I Associations (P & I Clubs) expressed its willingness to consider whether it could assist with providing information on the cost of claims arising from spills from ships' bunkers.

2 The P & I Clubs have since been able to collate relevant claims data and this information is summarized in this document.

Spills from Ships Bunker Oil – Claims Data

3 All 13 principal member Clubs of the P & I Clubs have responded with claims data for pollution damage arising from incidents involving a bunker oil spill from vessels entered in their Club at the time of the incident between 2000 and the present. The Clubs have provided figures for the total cost of claims incurred for pollution damage only and excluded other claims incurred (i.e. cargo claims, collision claims, etc.) which are irrelevant for the purposes of this data request.

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4 The Clubs also indicated whether shipowner limits of liability were applicable in each case, or whether a limitation fund was established in accordance with either the International Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 76), or the 1996 LLMC Protocol. It has been possible, therefore, to determine whether the total cost of claims incurred for pollution damage arising from a bunker oil spill in each reported incident exceeded the 1996 LLMC Protocol limits, or a separate limit of liability, as provided for under domestic legislation. United States' pollution cases involving vessels entered in one of the P & I Clubs have been excluded, since it is considered highly unlikely that the United States will become a State party either to the 1996 LLMC Protocol or to the 2001 Bunkers Convention.

5 The P & I Clubs understand that the focus of this particular analysis is on the limits of liability as contained in the 1996 LLMC Protocol, since this is the most recently adopted global limitation regime that is in force and has been open for ratification/accession by States for nearly thirteen years. As of 27 August 2009, there are 35 States parties to the 1996 LLMC Protocol.

Number of incidents

6 In total, information on claims data was provided for 595 incidents during the period 2000 to the present, where the relevant vessel was entered with a member Club of the P & I Clubs and costs had been incurred for pollution damage arising from a spill from the ship's bunker oil. This does not include a significant number of incidents involving vessels entered with International Group Clubs, where the total cost of such claims was minimal and limitation was not an issue i.e. less than US\$100,000. Since such cases did not involve questions of limitation and are high in number, the data provided by a number of Clubs excluded cases where the total cost of claims did not exceed US\$100,000.

7 It should also be noted that the 595 incidents do not include any incidents involving vessels entered with P & I providers that are not a member of the P & I Clubs.

Shipowners' limitation and claims paid

8 Out of this total of 595 incidents reported, only eight incidents have been reported where the total cost of claims for pollution damage arising from a spill from the ship's bunker oil exceeded the 1996 LLMC Protocol limits, whether or not in force in the State in whose waters the incident occurred.

9 In four of these incidents, the Protocol was in force at the time in the State in whose waters the incident occurred.

10 In each of these four cases the 1996 LLMC Protocol limits were exceeded by significant amounts, ranging from approximately US\$9.5 million above the 1996 limit (where the vessel was 10,957 gt) to approximately US\$50 to 60 million above the relevant 1996 limit (where the vessel was 1,466 gt). This latter figure is quoted as an estimate since the case remains open and it is not possible to provide anything other than an initial estimate of the total expected costs of third party claims.

11 The remaining four incidents occurred in States where the 1996 LLMC Protocol limits were not in force at the time the incident occurred. In one incident, the State had ratified the 1996 Protocol but it had yet to enter into force in that State (although it was in force internationally at the time), and the total cost of claims would have exceeded the 1996 limits by a relatively small amount if the Protocol had been in force, i.e. by approximately US\$1 million. In another incident, the State had not ratified the 1996 Protocol, but has also since done so,

although the 1996 limits would have been exceeded by a significant amount if the Protocol had been in force at the time, i.e by approximately US\$19 million (where the vessel was 22,412 gt). In the remaining two incidents, both States in whose waters the incidents occurred were neither party to the 1976 LLMC Convention nor the 1996 LLMC Protocol, and this still remains the case.

Conclusions

12 The claims data show that the vast majority of claims paid for pollution damage arising from a spill, or the threat of a spill, from a ship's bunker oil have been met in full by the limits of liability for claims as contained in the 1996 LLMC Protocol, or would have been met in full by these limits if the Protocol had been in force in the relevant State at the time of the incident.

13 Only eight incidents out of the total of 595 reported incidents since 2000 have incurred costs for pollution damage arising from a bunker spill that exceeded the 1996 LLMC Protocol limits, whether the 1996 limits were applicable at the time of the incident or not depending on whether the State concerned had ratified the Protocol or the Protocol had entered into force, although each of these eight incidents occurred since the Protocol entered into force on 13 May 2004.

14 This represents 1.34% of the total number of reported bunker spill incidents. Only four of these eight incidents occurred in the waters of a State that had ratified or acceded to the 1996 LLMC Protocol and where the Protocol had entered into force in that State at the time of the incident.

15 In the context of the initial data request from the delegation of Japan and subsequent calls for consideration to be given to increasing the 1996 LLMC Protocol limits by means of the tacit amendment procedure in article 8 of the Protocol, it should be noted that article 8.5 of the Protocol states that "when acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance".

16 This document provides the necessary "experience of incidents and, in particular, the amount of damage resulting therefrom" insofar as the cost of claims arising from bunker spills is concerned, as was agreed by States in the adoption of the 1996 LLMC Protocol when acting on a proposal to amend the 1996 Protocol limits.

Action requested of the Legal Committee

17 The Legal Committee is requested to consider the information provided in this document and to comment and decide as appropriate.
