



INTERNATIONAL CONFERENCE
ON THE REVISION OF
THE HNS CONVENTION
Agenda item 6

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**CONSIDERATION OF A DRAFT PROTOCOL TO THE INTERNATIONAL
CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE
IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND
NOXIOUS SUBSTANCES BY SEA, 1996**

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

SUMMARY

Executive summary: This document provides an analysis of claims data collated by the P & I Clubs on incidents involving the carriage of HNS between 2002 and 2010. This is an updated document from the one submitted to a meeting of the 1992 IOPC Fund in 2008.

Action to be taken: Paragraph 25

Related document: LEG 94/12, paragraph 4.13

Introduction

1 In response to a request from the Government of the United Kingdom, on 14 December 2007, on behalf of a number of States, for "information and data in respect of claims history for incidents that would have been caught by the HNS Convention had it been in force at the time of the incident occurring", the P & I Clubs submitted an analysis of claims data to the first meeting of the 1992 IOPC Fund's Fifth Intersessional Working Group (Fund WG) (see document 92 Fund/WBR/5/5). The P & I Clubs were requested, at the time, to provide figures for the previous 5 to 6 years, assuming that the HNS Convention had entered into force on 1 January 2002.

2 This information was highly relevant to the work of both the Fund WG and the Legal Committee in considering the proposal to increase the shipowner's limits of liability for the carriage of packaged HNS by sea, including, at the ninety-fourth session of the Legal Committee where "most delegations expressed their readiness to accept the increase in shipowner liability on packaged HNS, provided that it was moderate and that the principle of shared liability of shipowner and cargo interests be maintained" (paragraph 4.13 of document LEG 94/12 – report of the Legal Committee on the work of its ninety-fourth session).

3 The P & I Clubs have since collated updated claims data to January 2010 and have summarized the overall claims data for the period 2002 to January 2010 in this document for consideration by the Diplomatic Conference.

HNS incidents – claims data

4 All 13 principal members of the P & I Clubs responded with claims data relating to incidents involving the carriage of HNS by vessels entered in their Club at the time of the incident, with the total cost of claims incurred (including the gross estimate that may still be held by the Club over and above the amount already paid) for damage arising from the incident that would have been governed by the Convention, if in force at the time of the incident. The P & I Clubs have, therefore, differentiated between claims incurred for damages that fall within the scope of the definition of "damage" under the 1996 Convention and claims incurred that fall outside the scope of this definition (i.e. cargo claims, collision claims, etc.).

Number of incidents and total cost of claims

5 In total, claims data were provided in respect of 192 incidents during the time period 2002 to January 2010 where the relevant vessel was entered with a P & I Club member (which includes the 126 incidents previously reported to the Fund WG for the period 2002 to 2007).

6 The total cost of claims paid in all 192 incidents for "damage" that would have been governed by the Convention, if in force at the time of each incident, was approximately 182.7 million SDR/US\$276.5 million.

Shipowners' limitation and claims paid

7 Out of this total of 192 incidents, the total cost of claims incurred in 189 incidents fell in each case within the shipowner's limit of liability under the 1996 HNS Convention (in respect of claims incurred that would have been governed by the Convention, if in force at the time of the incident). Only three incidents that occurred in this period from the list of incidents provided by the P & I Clubs resulted in "damage" claims which exceeded the shipowner's limit of liability under the 1996 HNS Convention and would therefore have engaged the HNS Fund. Consequently, in approximately 98%-99% of the incidents where claims data have been provided by the P & I Clubs, full compensation would have been paid by the shipowner under the 1996 HNS Convention if the Convention had been in force at the time of the incident occurring.

8 With regard to the three above-mentioned incidents, two of them were reported previously to the Fund WG. One incident arose from an explosion on board a chemical tanker in Brazil, another incident from the discharge of gasoline at a terminal in the United States and the third incident involved a sinking off the coast of Korea.

9 The first incident – the one which occurred in Brazil – represents the highest claim incurred that would have fallen within the scope of the Convention, namely, 35.7 million SDR. This incident involved a vessel of 11,636 gt with a limitation amount of approximately 24.5 million SDR under the Convention.

10 The second incident – the one which occurred in the United States – incurred a claim of approximately 22.6 million SDR. This incident involved a vessel of 6,411 gt with a limitation amount of approximately 16.6 million SDR under the Convention.

11 The third incident – the one which occurred in the Korean waters – incurred a claim of approximately 22.7 million SDR. This incident involved a vessel of 1,715 gt with a limitation amount of 10 million SDR under the Convention.

12 From the total cost of claims paid in all 192 incidents of 182.7 million SDR for "damage" that would have been governed by the Convention, if in force at the time of each incident, approximately 152.8 million SDR would have been met by the shipowner and only approximately 29.9 million SDR by the HNS Fund.

Incidents involving packaged goods

13 Perhaps more importantly, given that the Diplomatic Conference is focused on limits for incidents involving the carriage of packaged goods by sea, it is noteworthy that none of the three above-mentioned incidents involved the carriage of packaged HNS by sea as defined by the Convention.

14 The highest claim incurred that involved the carriage of packaged HNS goods totalled approximately 18 million SDR. This involved a vessel of 16,800 gt with a limitation amount of approximately 32.2 million SDR under the Convention. The total cost of claims arising from this incident therefore fell comfortably within the shipowner's limit of liability. The next highest claim incurred that involved the carriage of HNS in packaged form totalled approximately 5.2 million SDR, which is comfortably within the shipowner's minimum limit of liability under the Convention of 10 million SDR.

Breakdown of claims

15 In terms of the breakdown of the total cost of claims arising from each of the 192 incidents, and the number of incidents where the cost of claims fell within a particular band range of cost of claims, the following information is provided:

Range of cost of claims (SDR) per incident	Number of incidents	% of total number of incidents
10 million – 36 million	6	3.1
1 million – 9.99 million	23	12
0.01 – 999, 999	82	42.7
0	81	42.2
Total	192	100

16 The above table highlights that, out of the 192 incidents reported, claims in respect of only six incidents exceeded the minimum shipowner's limit of liability under the 1996 HNS Convention of 10 million SDR. As already noted above, and on account of the size of the vessels involved in these six incidents, three of the claims actually exceeded the shipowner's limit of liability under the regime.

17 Only one of these six incidents involved smaller vessels/vessels of 2,000 units of tonnage or less (for which the 10 million limit of liability applies), namely the incident that occurred in Korean waters involving a vessel of 1,715 gt.

18 The size of the other five vessels mentioned above ranged from 6,400 gt to 38,600 gt. The upper ceiling in the claims cost data above (of 36 million SDR) represents the highest reported claim incurred that would have fallen within the scope of the Convention.

19 The table above also shows that 81 of the total of 192 incidents would actually have incurred no claims for "damage" under the Convention at all, if the Convention had been in force at the time of the incident.

Types of incidents

20 Where possible, the incidents have also been categorized against the different sectors of the HNS Fund under the 1996 HNS Convention, as follows:

HNS Sector	Number of Incidents	% of total number of incidents
Oil	63	32.81
LPG	15	7.81
LNG	1	0.52
General	84	43.75
Unknown/not classified	29	15.1

21 With further reference to packaged goods, of the 84 incidents with claims data which have either been allocated as falling under General (account) or other/unknown, it is possible to determine that 50 of these did not involve the carriage of packaged goods, mainly on account of the type of vessel involved.

22 Therefore, only 34 incidents out of the total of 192 with claims data provided can be considered as possible packaged goods incidents, i.e. 17.7% of the total number of incidents. Without further information on each incident it is not possible to be more definite in this respect. However, the information provided in this document on the breakdown of claims highlights the fact that all reported incidents involving the carriage of packaged goods fell within the existing shipowner's limit of liability under the 1996 HNS Convention.

Summary

23 The claims data clearly show that the vast majority of claims paid for "damage" arising from incidents involving the carriage of HNS by sea would have been met in full by the shipowner under the Convention, if in force at the time of the incident.

24 The data also show that all claims in respect of packaged goods incidents would have been met in full by the shipowner and would not have engaged the HNS Fund.

Action requested of the Conference

25 The Conference is invited to take note of the information contained in this document.
