

**INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR
DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND
NOXIOUS SUBSTANCES BY SEA**

**Analysis of claims data on list of HNS incidents involving Vessels entered in an IG
Member Club in period 2002 - 2007**

Submitted by the International Group of P&I Clubs

Summary:	This document provides an analysis of claims data collated by the International Group of P&I Clubs on incidents involving the carriage of HNS between 2002 – 2007.
Action to be taken:	See section 3 of this paper.

1. Introduction

The International Group of P&I Clubs (IG) received a request from the UK Government 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 IG was requested to provide figures for the last 5-6 years, assuming that the HNS Convention entered into force on 1 January 2002.

The IG understands that this information is highly relevant to the work of the HNS Focus Group that will take place within the IOPC Fund during the coming months.

The information that has been collated on claims data from the IG Clubs is summarised in this paper.

2. HNS incidents – Claims data

Following receipt of the above mentioned request, all 13 principal member Clubs of the IG responded with claims data relating to incidents involving the carriage of HNS by vessels entered in their Club at the time of the incident between 2002 - 2007, 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. This did, therefore, require the Clubs to differentiate between claims incurred for damages that fall within the scope of the definition of “damage” under the 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

In total, claims data was provided in respect of 126 incidents during this time period where the relevant vessel was entered with a member Club of the IG.

The total cost of claims paid in all 126 incidents for “damage” that would have been governed by the Convention if in force at the time of each incident was approximately 137 million SDR/ US \$212 million.

Shipowners’ Limitation & Claims Paid

Out of this total of 126 incidents, the total cost of claims incurred in 124 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 Convention if in force at the time of the incident). Only 2 incidents that occurred in this period from the list of incidents provided by the IG 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 98% of the incidents where claims data has been provided by the 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.

With regard to the two above mentioned incidents, one incident arose from an explosion on board a chemical tanker in Brazil and the other incident from the discharge of gasoline at a terminal in the United States.

The former incident represents the highest claim incurred that would have fallen within the scope of the Convention, namely 35.7m SDR/US\$ 55m. This incident involved a vessel of 11, 636 gt with a limitation amount of approx 24.5m SDR under the Convention.

The latter incident incurred a claim of approx. 22.6m SDR. This incident involved a vessel of 6,411 gt with a limitation amount of approx. 16.6 m SDR under the Convention.

It should be noted therefore that even in these 2 incidents where the HNS Fund would have been engaged, the total cost of claims did not significantly exceed the shipowner’s limit of liability under the Convention.

As a result, it should also be noted that from the total cost of claims paid in all 126 incidents of 137 million SDR for “damage” that would have been governed by the Convention if in force at the time of each incident, approx. 120m SDR would have been met by the shipowner and only approx. 17m SDR by the HNS Fund.

The IG was also specifically asked to provide claims data relating to incidents involving the carriage of HNS in packaged form by sea. It is noteworthy that neither of the 2 above mentioned incidents involved the carriage of packaged goods as defined by the Convention.

The highest claim incurred that involved the carriage of packaged goods totalled approx. 18m SDR/US \$ 28.2m. This involved a vessel of 16, 800 gt with a limitation amount of approx. 32.2m 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 approx. 5.2m SDR, which is comfortably within the shipowner’s minimum limit of liability under the Convention of 10m SDR.

Breakdown of Claims

In terms of the breakdown of the total cost of claims arising from each of the 126 incidents, and the number of incidents where the cost of claims fall within a particular band range of cost of claims, the following information is provided:

Range of cost of claims (SDR) per incident	No. of incidents	% of total no. of incidents	Range of cost of claims (US \$) per incident	No. of incidents	% of total no. of incidents
10m – 36m	5	4.0	10m – 55m	5	4.0
1m – 9.99m	19	15.1	1m – 9.99m	19	15.1
0.01 – 999, 999	39	30.9	0.01 – 999, 999	39	30.9
0	63	50	0	63	50
Total	126	100		126	100

The above information is provided in both SDRs on the left hand side and US \$ on the right hand side.

The above table highlights that only claims in respect of 5 of the 126 incidents reported exceeded the minimum shipowner's limit of liability under the 1996 HNS Convention of 10 million SDR. However as already noted above, and on account of the size of the vessels involved in these 5 incidents, only 2 of them actually exceeded the shipowner's limit of liability under the regime.

Furthermore, none of these 5 incidents involved smaller vessels/vessels of 2,000 units of tonnage or less (for which the 10m limit of liability applies).

The size of the 5 vessels mentioned above ranged from 6, 400 gt to 38, 600 gt.

The upper ceiling in the claims cost data above of 36m SDR/US\$ 55m represents the highest claim incurred that would have fallen within the scope of the Convention.

The table above also shows that 63 of the total of 126 incidents actually 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

Where possible, the incidents have also been categorised 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	41	32.5
LPG	13	10.3
General	46	36.5
Unknown/not classified	26	20.6

With further reference to packaged goods, of the 72 incidents with claims data which have either been allocated as falling under General (account) or other/unknown, it is possible to determine that 49 of these did not involve the carriage of packaged goods, mainly on account of the type of vessel involved.

Therefore only 23 incidents out of the total of 126 with claims data provided can be considered as possible packaged goods incidents i.e. 18.3% 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 paper 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.

3. Action to take

This information has been provided following a request from the UK Government on behalf of a number of States and is intended to facilitate the discussions in the HNS Focus Group.

The claims data clearly shows 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.

Based on the historical claims record, there is clearly ample headroom in the existing Convention limits and no empirical justification for an increase in the shipowner's limits of liability under the Convention, either for the carriage of packaged goods only or for all sectors of HNS governed by the Convention.

It is unlikely, even taking into account factors such as inflation and the rising cost of claims, that an increase in the limits of liability would result in any significant reduction in the compensation paid by the HNS Fund given that a significant majority of the total cost of claims paid in each of the 126 reported incidents fell within the shipowner's minimum limit of liability of 10m SDR under the existing 1996 HNS Convention.