

Liability under the International Oil Pollution Compensation Regime – Sharing of the Financial Burden between the Shipping and Oil Industries

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International Oil Pollution Compensation Funds

AREAS COVERED

1. The Regime (CLC/ Fund / Supp Fund)
2. The Cost Study
 - Why
 - Data
 - Analysis
 - Results
 - Conclusion



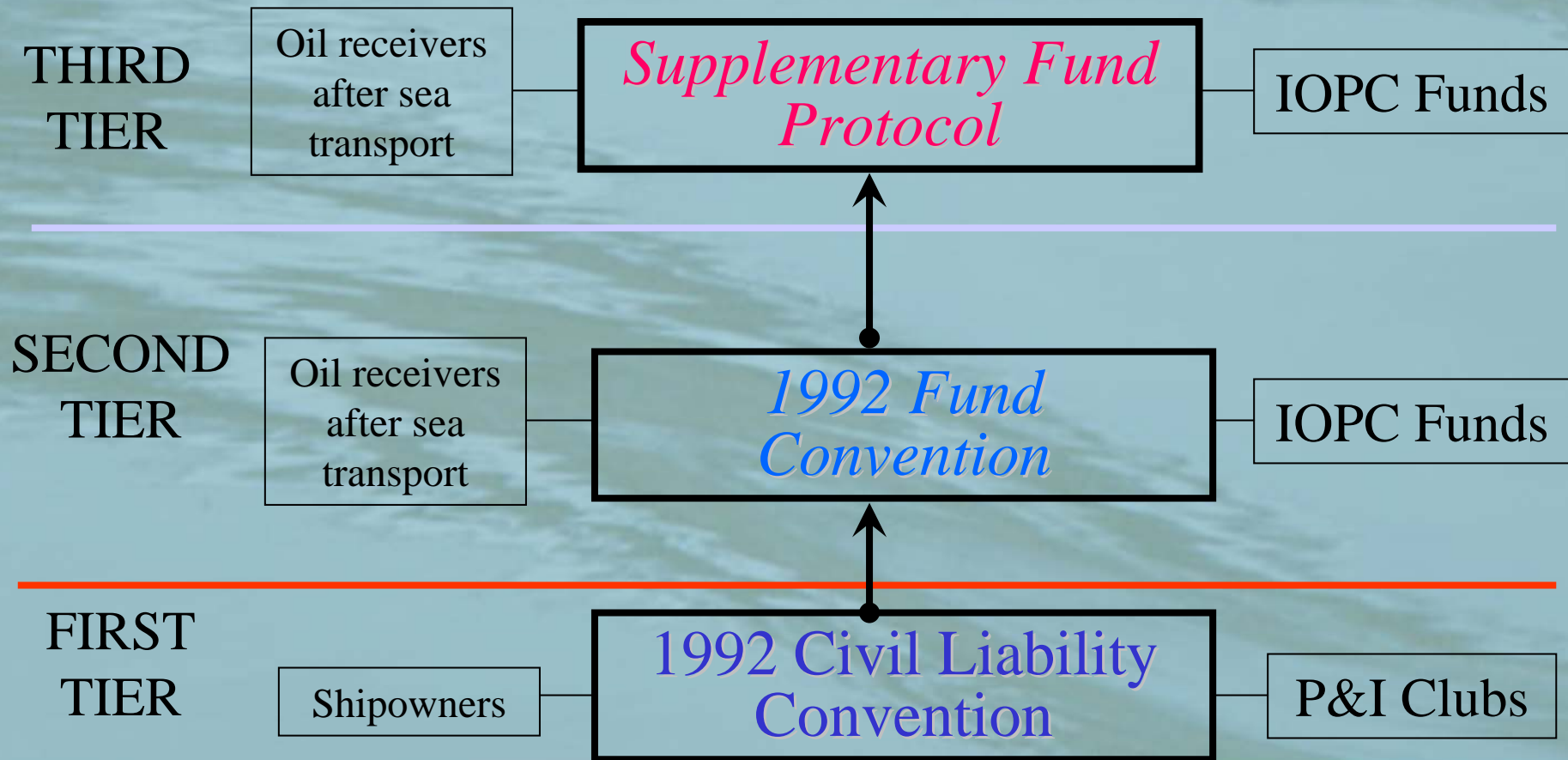
1992 Civil Liability Convention

Three Basic Principles:

- *Strict Liability*
- *Limitation of liability*
- *Compulsory insurance*



The Three Tier System



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Liability - Limits under the 1992 Conventions

GT	SDR	US \$
≤ 5000	4 510 000	6 694 000
Per additional GT up to 140 000	631	936.5
$GT \geq 140\,000$	89 770 000	133 234 000

CLC / Fund Limit – SDR 203 million or US\$301 million



Exchange rate as of 5 September 2005
International Oil Pollution Compensation Funds

SUPPLEMENTARY FUND

- Protocol establishing a Supplementary Fund adopted in May 2003
- Maximum compensation 750 million SDR (US\$1.1billion), including amounts payable under 1992 Conventions
- Contributions to Supplementary Fund payable by oil receivers in States Parties to Protocol
- Entered into force on 3 March 2005



Shipowner Exempt from liability

- *Act of War*
- *Sabotage by third party*
- *Negligence of public authorities in maintaining navigational aids*



Fund Conventions do not apply when:

- *Damage in non-member State*
- *An act of war of spill from warship*
- *Claimant cannot prove the damage came from a “ship” as defined in the Conventions*



REVIEW OF 1992 CONVENTIONS

1992 Fund Working Group:

- Adequacy of the financial limits
- Sharing of the financial burden between shipping and oil industries studies



REASON FOR COST STUDY

- Conventions state that: 'the economic consequences of pollution damage should be shared by shipping and oil industries'
- Disagreement between shipping and oil industries on past and future sharing of costs



DATA SOURCES

- International Group of P&I Clubs provided data in respect of 5,802 incidents between 1978 and 2002
- Financial records of the 1971 and 1992 Funds for the same period
- Voluntary schemes (TOVALOP/CRISTAL)



TOVALOP & CRISTAL

- Similar in scope to Conventions, but applied worldwide
- Coexisted with Conventions until 1997
- Shipowners reimbursed contributors to 1971 Fund up to 92 CLC limit over 10-year period (1987 – 1997)

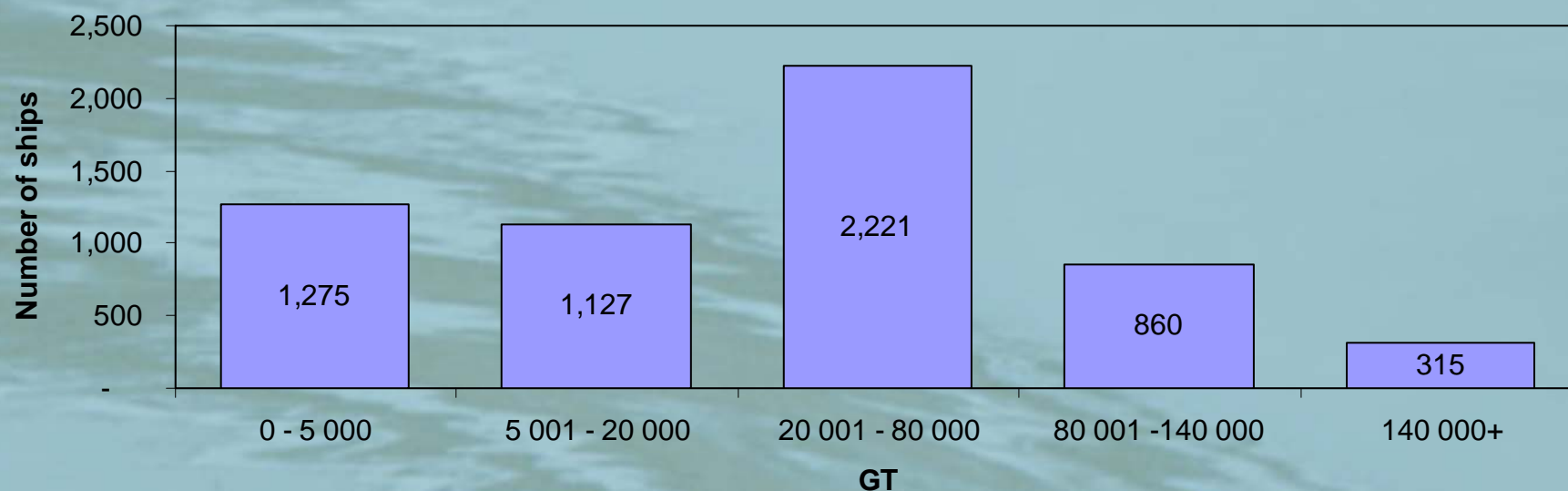


METHODOLOGY

- All cost data converted into US dollars
- Used actual or expected payments as at 31 December 2003
- For *Erika* & *Prestige* incidents used maximum amounts payable under the Conventions as anticipated full admissible costs
- Also looked at effect of inflation of costs to 2002 monetary values



Number of incidents covered by the cost study for different size categories of ships

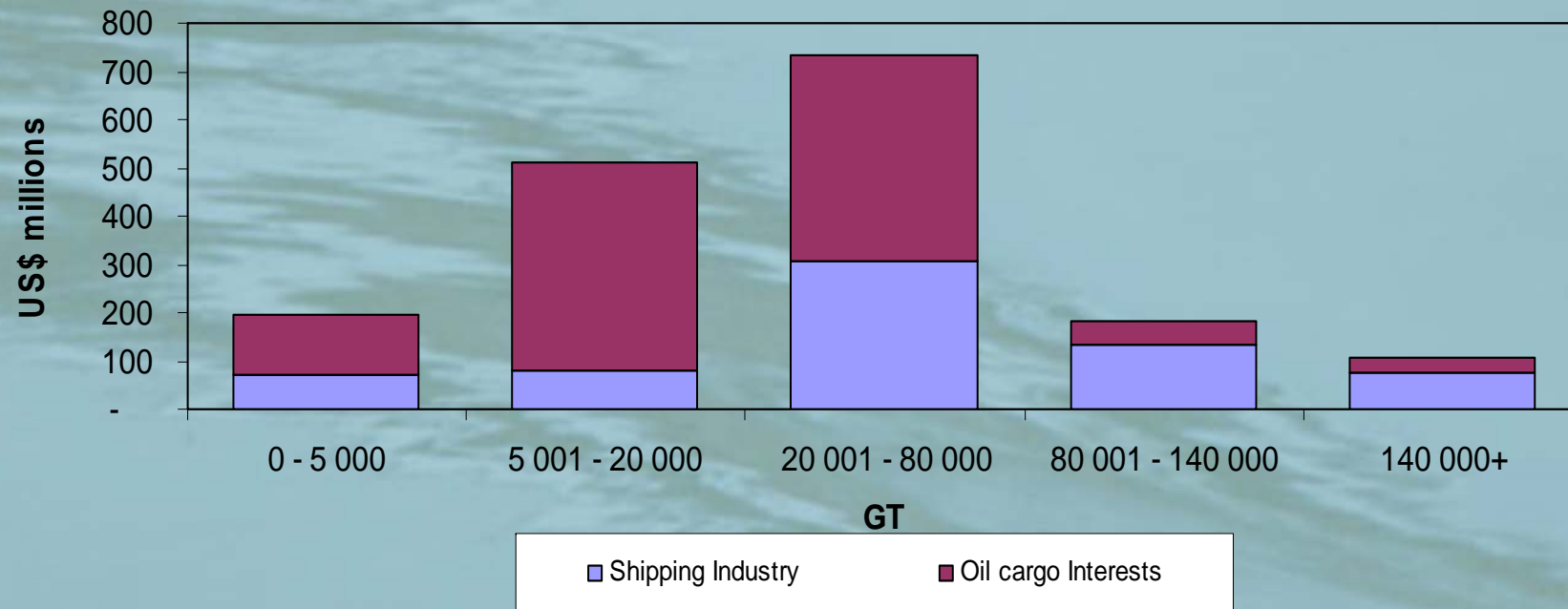


RESULTS

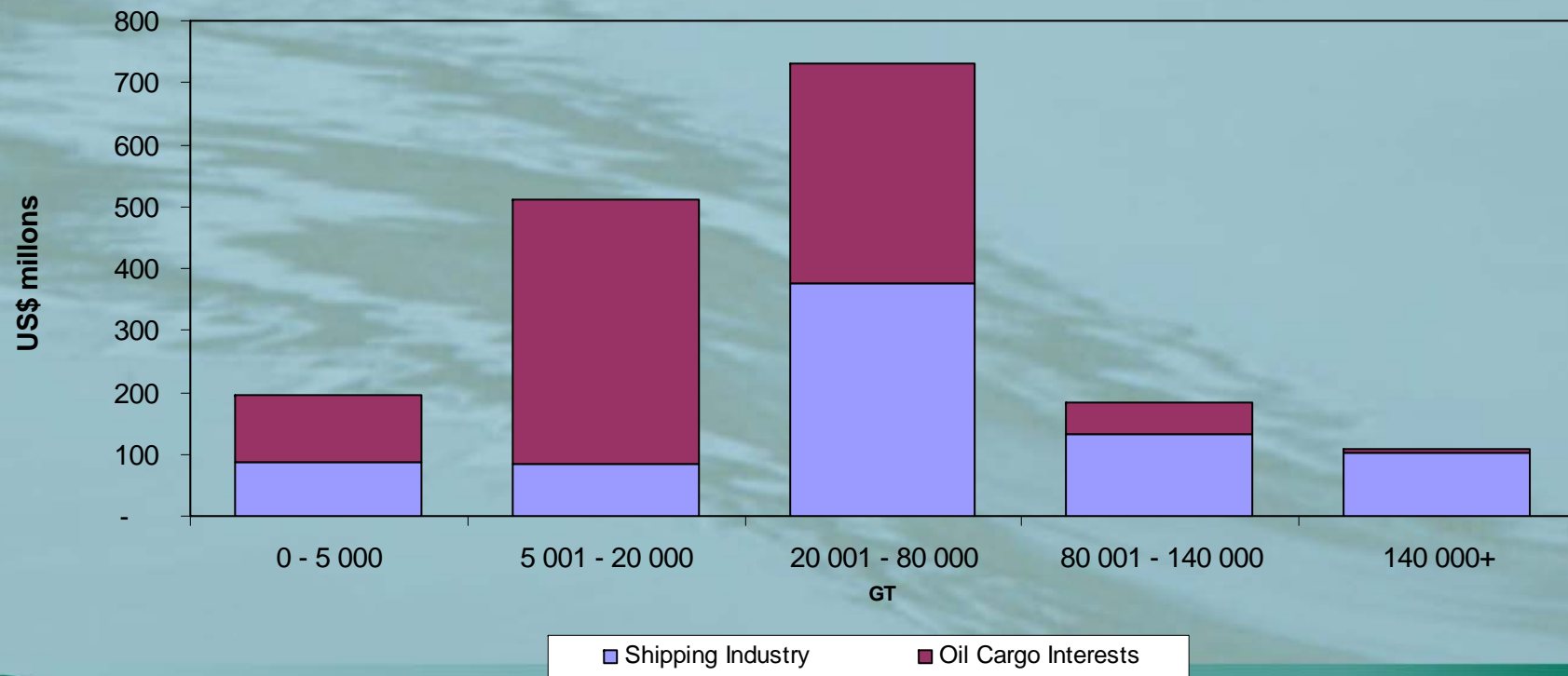
- On basis of financial limits under Conventions, shipping industry paid 39% and oil industry 61% of total compensation
- After reimbursements under voluntary schemes, shipping industry paid 45% and oil industry 55%
- After recourse actions against shipowners/third parties, shipping industry paid 53% and oil industry 47%



Total amounts paid by shipping industry and oil cargo interests within the financial limits under the relevant Conventions for different size categories of ship



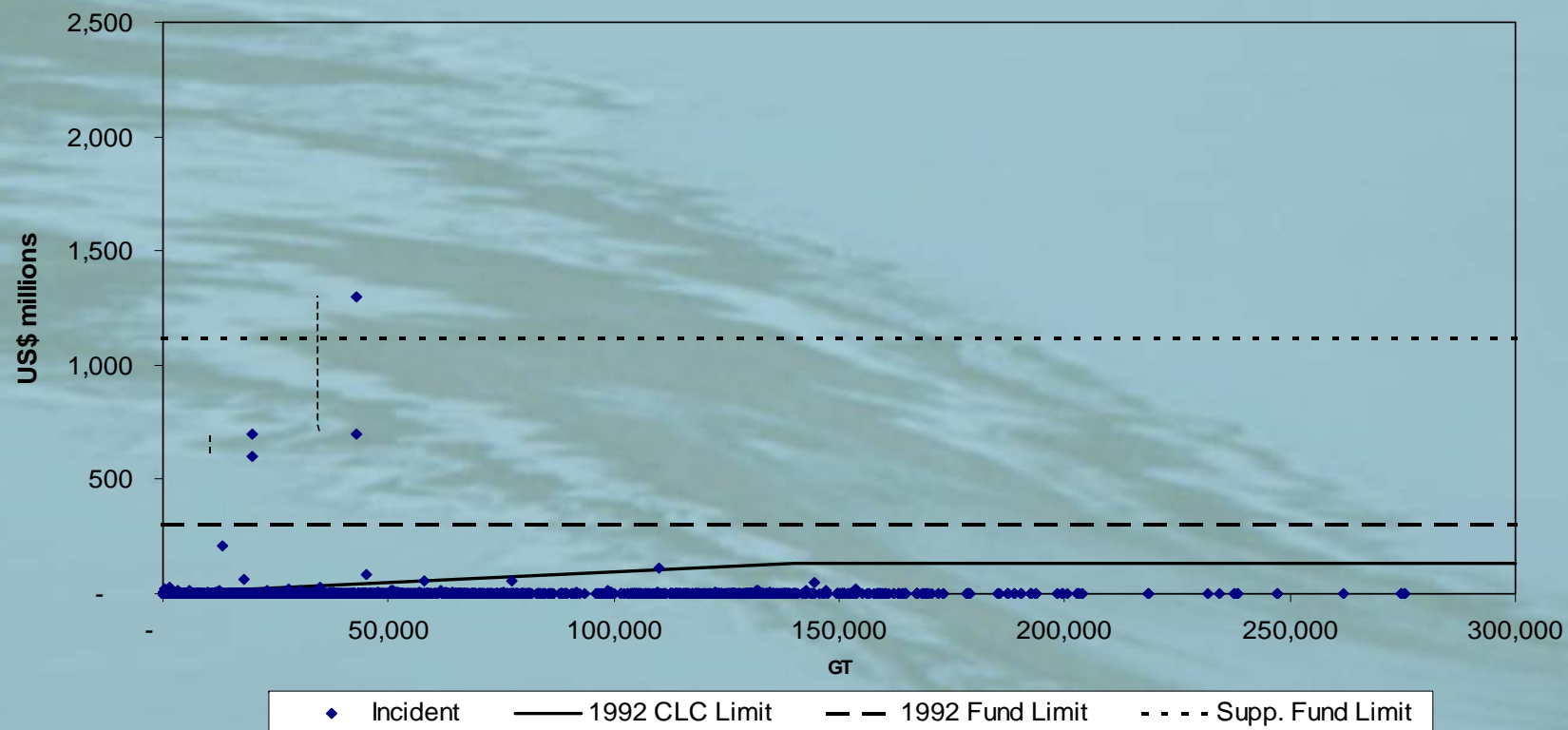
Total amounts paid by the shipping industry and oil cargo interests after taking into account reimbursements by shipping industry to oil industry under the voluntary schemes for different size categories of ship



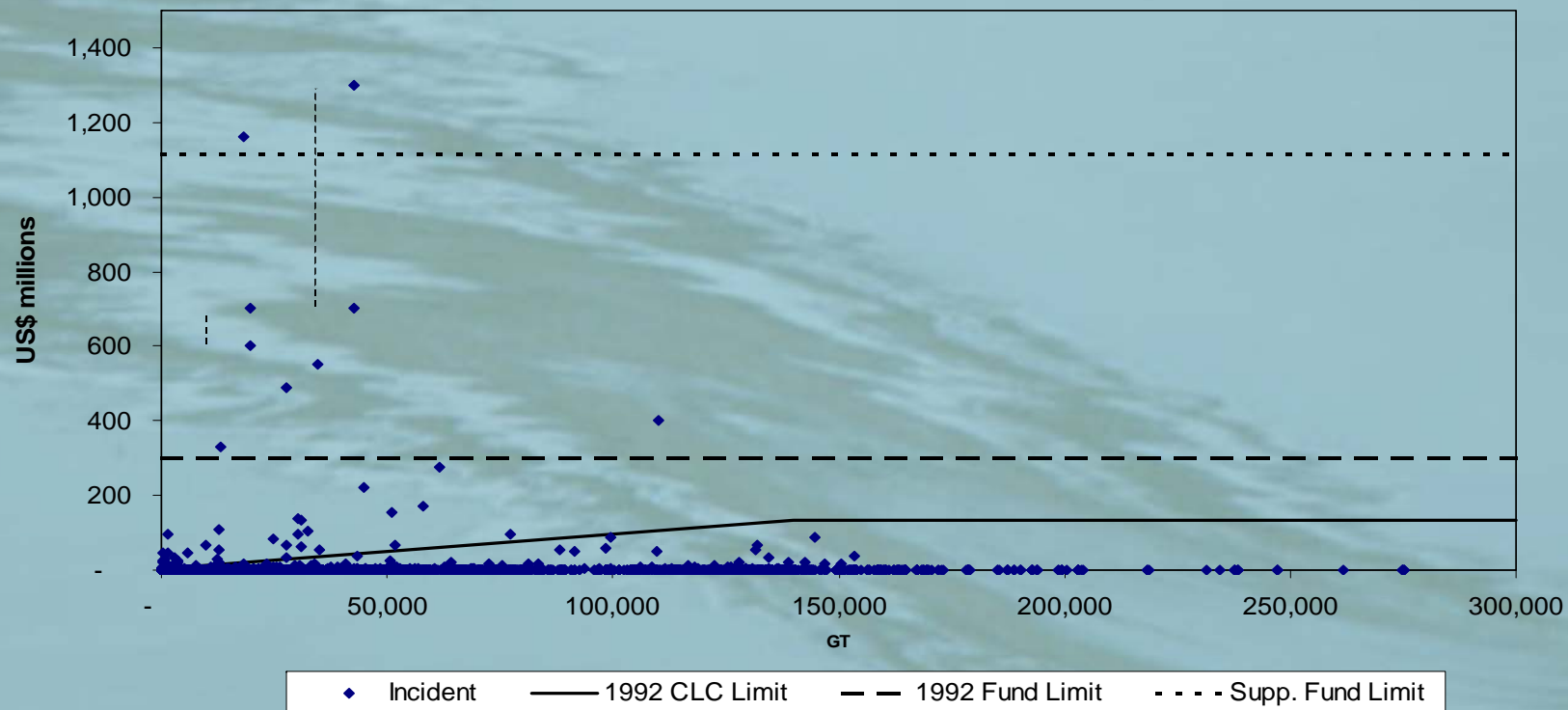
Total amounts paid by shipping industry and oil cargo interests after taking into account reimbursements by shipping industry to oil industry under the voluntary schemes and after recourse actions against shipowners/third parties for different size categories of ship



Costs of past oil spills compared with the financial limits under the 1992 Conventions and the Supplementary Fund Protocol



Costs of past oil spills inflated to 2002 monetary values and compared with the financial limits under the 1992 Conventions and the Supplementary Fund Protocol



SHARING OF THE FINANCIAL BURDEN

(New voluntary proposals by P & I Clubs in Supplementary Fund States)

- **STOPIA** : Increase on a voluntary basis of limitation amount applicable to small ships to 20 million SDR (US\$30 million).

or

- **TOPIA**: 50/50 split between shipping and oil interests of compensation payments made by Supplementary Fund



CONCLUSIONS

- 98% of all incidents compensated by shipping industry
- Shipping industry paid 45% and oil industry 55% of total compensation amount
- Supplementary Fund will lead to greater financial burden on oil industry

