



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND 1992

ASSEMBLY
5th session
Agenda item 24

92FUND/A.5/20
11 October 2000
Original: ENGLISH

ASSEMBLY
23rd session
Agenda item 24

71FUND/A.23/21

EARLY COMPENSATION PAYMENTS BY THE 1992 FUND

Note by the Director

Summary:

Consideration is given to the issue of whether the 1992 Fund could help speed up payments of compensation in cases where the total amount of the established claims is less than the limitation amount applicable to the ship in question. The question is whether in such cases the Fund could pay compensation to claimants and thereafter present a claim for reimbursement to the P & I Club concerned.

Action to be taken:

Consider whether the 1992 Fund could speed up payments of compensation in such situations.

1 Introduction

- 1.1 At the 1992 Fund Assembly's 4th session, the United Kingdom delegation drew the Assembly's attention to situations which had recently become apparent in which claimants, who could have expected to receive compensation from the shipowner (or his insurer), as the total amount claimed in respect of the incident was less than the limit of the shipowner's liability, had received no compensation two years after the incident had occurred. That delegation recognised that the regime of the Conventions established a two-tier system in which the 1992 Fund should not normally become involved in the payment of compensation until the limit of the shipowner's liability had been reached. Nevertheless that delegation suggested that it would be appropriate to consider whether there might be a possibility within the system of the Conventions whereby victims could in such circumstances obtain compensation from the 1992 Fund, which could then present a subrogated claim to the shipowner (document 92FUND/A.4/32, paragraph 32.3.1).

- 1.2 The 1992 Fund Assembly instructed the Director to study the question raised by the United Kingdom delegation and to report to the Assembly at its 5th session. Delegations were invited to submit their views on the matter to the Secretariat, in order to assist the Director in the preparation of his study (document 92FUND/A.4/32, paragraph 32.3.2).
- 1.3 The Director has not received any submissions from delegations.
- 1.4 At the 62nd session of the 1971 Fund's Executive Committee, acting on behalf of the Assembly, the Malaysian delegation drew the Executive Committee's attention to the intervention made by the United Kingdom delegation at the 4th session of the 1992 Fund Assembly (document 71FUND/EXC.62/14/A.22/23, paragraph 27.2.1).

2 1971 Fund's established policy

At its 60th session, the 1971 Fund Executive Committee considered a revised procedure for the apportionment of payments between P & I Clubs and the 1971 Fund which had been proposed by one P & I Club (documents 71FUND/EXC.60/12 and 71FUND/EXC.60/12/1). The Committee recalled that the 1971 Fund's policy had been to start paying compensation only after the shipowner's insurer had paid compensation up to the limitation amount applicable to the ship in question. The Committee noted that the 1971 Fund and the P & I Club made an estimate of the limitation amount as soon as possible after the incident, and that an adjustment between the Fund and the Club was made once the exact limitation amount had been determined, often in connection with the payment of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention. After a detailed discussion, the Executive Committee decided that the existing practice and procedures did not require any change (document 71FUND/EXC.60/17, paragraph 4.14).

3 Director's considerations

- 3.1 The Director has considered the issue raised by the United Kingdom delegation and would like to make the following observations.
- 3.2 In most cases where it is clear from an early stage that the total amount of the established claims will not exceed the shipowner's limitation amount under the 1992 Civil Liability Convention, the 1992 Fund will not be involved in the incident and it will therefore not take part in the assessment of the claims, since this assessment is made by the shipowner/P & I Club. It would therefore be difficult in these cases for the 1992 Fund to pay compensation to victims and then claim reimbursement from the shipowner/P & I Club without the Fund's making an independent assessment of the claims.
- 3.3 Another scenario is where it is considered possible in the early stages that the total amount of the established claims will exceed the shipowner's limitation amount, but that it later becomes apparent that the total of the established claims will not exceed that amount. The 1992 Fund would then have been involved in the assessment of claims up to that point. In that situation it would be possible for the 1992 Fund to make payments for claims in respect of which it had been involved in the assessment and later claim reimbursement from the shipowner/Club. However, the Director is not aware of any cases where there has been any significant delay in the Club's payments once the amount of an admissible claim has been established. The delay in payment has normally been caused by ongoing discussions with the claimant regarding the admissible amount. Experience shows that these discussions can be protracted either because the claimant has failed to substantiate his claim or because he is not prepared to settle the claim for the amount assessed by the Club/Fund experts. Even in these cases the Club concerned normally makes advance payments on the basis of the assessment made by the experts engaged by the Fund and the Club. For this reason the Director takes the view that the 1992 Fund would not be able to

speed up payments unless the Assembly were to be prepared to accept that the Fund should make advance payments when the amount of the loss or damage has not been substantiated.

- 3.4 In this context reference should be made to the *Osung N°3* and *Kyungnam N°1* cases where the total amount of the claims exceeded the applicable limitation amount. In both of these cases the vessel was not entered with a P & I Club. The shipowner had established the limitation fund by paying the limitation amount into the Court and was then unable to make payments to claimants. The Executive Committee decided that in these cases the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund (document 71FUND/EXC.60/17, paragraphs 3.6.2 and 3.11.2).

4 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider whether the 1992 Fund would be able to speed up payments of compensation in the situations dealt with in the document.
-