



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992**

EXECUTIVE COMMITTEE
9th session
Agenda item 3

92FUND/EXC.9/5
10 October 2000
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

MARY ANNE

Note by the Director

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| Summary | The <i>Mary Anne</i> sank in the entrance to Manila Bay spilling an unknown quantity of intermediate fuel oil. The shipowner's insurer has settled claims in respect of oil removal and clean-up for £1.1 million. A local salvage and towage company has presented a claim against the shipowner and his insurer for £730 000 which has become the subject of legal proceedings. The insurer has maintained that the shipowner was in breach of the insurance policy and has indicated that it may request the shipowner and the 1992 Fund to reimburse it the amounts paid in compensation. |
| Action to be taken: | Information to be noted. |

1 The incident

- 1.1 On 22 July 1999 the Philippines-registered sea-going, self-propelled barge *Mary Anne* (465 GT), en route from Subic Bay to Manila (Philippines), became swamped during strong winds and heavy seas and sank in approximately 60 metres of water off the port of Mariveles at the entrance to Manila Bay. It was reported that the barge was carrying a cargo of 711 tonnes of intermediate fuel oil as well as some 2.5 tonnes of gas oil bunkers. The wreck leaked oil continuously over several days, but by 29 July 1999 the leakage was only about one to five tonnes per day and much of the surfacing oil dispersed naturally. Some oil apparently from the *Mary Anne* stranded on shorelines in the vicinity of Mariveles Harbour and on two islands in the entrance to Manila Bay.
- 1.2 The *Mary Anne* was insured by the Terra Nova Insurance Company Limited (Terra Nova). Most ships are traditionally entered in Protection and Indemnity Associations (P & I Clubs) which are mutual insurers. Terra Nova is not such an insurer but a conventional insurance company, which covers P & I risks at fixed premiums.

- 1.3 The 1992 Fund's co-operation with P & I Clubs in respect of the handling of incidents is governed by a Memorandum of Understanding signed in 1985 by the 1971 Fund and the International Group of P & I Clubs, which was extended in 1996 to apply also to the 1992 Fund. Since Terra Nova is not a member of the International Group, the Memorandum does not apply in this case. The Director proposed that Terra Nova and the 1992 Fund should co-operate in accordance with the Memorandum, which had been the case in the past in respect of incidents involving P & I Clubs outside the International Group, but the proposal was not accepted by Terra Nova. However, it was agreed that the 1992 Fund should receive copies of reports of the expert from the International Tanker Owners Pollution Federation Ltd (ITOPF) who attended the incident on behalf of Terra Nova to oversee operations and render advice in respect of clean-up operations.

2 Clean-up operations and other preventive measures

- 2.1 The clean-up operations were undertaken under the direction of the Philippines Coast Guard. The shipowner appointed a local salvage company to provide oil spill response services. The offshore response was based upon dispersant spraying from tugs. Shoreline clean-up involved the manual collection of oil and oily debris by local labour recruited by the municipalities.
- 2.2 Terra Nova contracted an international salvage company, to work in collaboration with a local salvor, to locate the wreck and plug any leaks prior to removing the oil remaining on board. The operations were initially hampered by bad weather, but diving surveys of the wreck and the sealing of vents and other openings were completed by the end of August. Diving inspections showed that there was no remaining oil in any of the cargo tanks. The inspections also showed that the bunker tanks were free of oil.

3 Claims for compensation

- 3.1 As at 10 October 2000 Terra Nova had incurred expenditure of approximately US\$1.6 million (£1.1 million) in respect of the oil removal contract and part of the clean-up operations.
- 3.2 A local salvage and towing company presented the shipowner with a claim for US\$1.1 million (£730 000) in respect of clean-up operations. It is understood that that this claim has not been paid and that the shipowner has no assets and is in effect in voluntary liquidation. Terra Nova has informed the 1992 Fund that there are no other outstanding claims arising from the incident.
- 3.3 Terra Nova has not consulted the 1992 Fund on the settlement of the claims referred to in paragraph 3.1.
- 3.4 The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.5 million). It is therefore unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention. However, Terra Nova has informed the 1992 Fund that the shipowner was in breach of the insurance policy in respect of the vessel on the grounds that the vessel was operated recklessly and that the crew was grossly incompetent. In particular, Terra Nova has maintained that on the basis of diving surveys of the wreck there was no evidence of damage to the vessel's hull which could have caused the sinking, the engine room skylights were open and had no glass in them and the engine room and pump room had been modified in such a way that there was no watertight bulkhead between the two spaces.
- 3.5 Terra Nova has informed the 1992 Fund that it may request the shipowner and the 1992 Fund to reimburse Terra Nova the amounts it has paid to claimants.

4 **Legal proceedings**

- 4.1 The local salvage and towing company referred to in paragraph 3.2 has commenced legal proceedings against the shipowner and Terra Nova in a Court in Manila in respect of its claim for US\$1.1 million (£730 000).
- 4.2 Terra Nova has opposed the claim on the basis of the defences set out in the insurance policy on the grounds referred to in paragraph 3.4. Terra Nova has insisted on being entitled to recover from the shipowner and/or the 1992 Fund the amounts paid by it in compensation.
- 4.3 Terra Nova has requested the 1992 Fund to endorse its action and recognise its potential claim against the Fund. The Director has informed Terra Nova that the Fund does neither endorse the action nor recognise any potential claim by Terra Nova for reimbursement against the Fund, since the total amount of the claims falls well below the limitation amount applicable to the *Mary Anne*.

5 **Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions in respect of this incident as it may deem appropriate.
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