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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

1 Introduction

1.1 This document sets out the situation as regards claims for compensation arising from the *Sea Empress* incident which occurred on 15 February 1996 in the entrance to Milford Haven in South Wales (United Kingdom). With respect to the incident, the impact of the spill, the clean-up operations and the effects on fishery and tourism, reference is made to document 71FUND/EXC.52/7.

1.2 The document also deals with some claims for compensation which the Director considers should be referred to the Executive Committee for decision.

2 Claims situation

2.1 General situation

2.1.1 As at 2 April 1997, 733 claimants had presented claims for compensation to the Claims Handling Office.

2.1.2 Claims have been approved for a total of £8 565 487. The Skuld Club has made payments to 425 claimants, totalling £6 454 617. Cheques for a further £111 247 are awaiting collection by the claimants. Most of these payments correspond to 75% of the amounts approved by the Club and the Fund. However, payments of up to 100% of the approved amounts have been made by the Club in a number of cases where the amount of compensation was small or where the claimant has been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

2.2 Claims for clean-up operations

2.2.1 The United Kingdom Government is expected to submit a claim for the clean-up operations carried out under the auspices of the Marine Pollution Control Unit of the Department of Transport. This claim is estimated to be in the region of £11 million.

2.2.2 Pembrokeshire County Council has submitted an interim claim for £1 094 094 in respect of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council prior to the local authority re-organisation on 1 April 1996. On the basis of the documentation submitted so far, this claim has been assessed by the experts engaged by the Skuld Club and the 1971 Fund at £918 373 for the substantiated items, of which 75% (£677 188) has been paid. Responses to some queries are still outstanding, and a further assessment will be made in the light of any additional information provided by the claimant. A further claim has been submitted by Pembrokeshire County Council for the period April-June 1996 amounting to £2 711 246. Documentation presented in support of this claim is being examined by the experts of the Skuld Club and the 1971 Fund. Further claims from the Council are expected.

2.2.3 Carmarthen County Council has claimed £900 094 in respect of costs incurred by five local authorities for clean-up operations carried out before 31 March 1996 (ie before the local government re-organisation). No documents have yet been submitted in support of this claim. A further claim of about £250 000 is anticipated for clean-up operations conducted by that Council after 1 April 1996.

2.2.4 Devon County Council and two District Councils (North Devon and Torridge) have submitted claims for £8 979, £2 232 and £1 459, respectively. The Devon County Council claim has been assessed at £4 922, and an interim payment of 75% of the assessed amount has been made. This claim will be re-examined in the light of further information requested from the claimant. The two District Council claims have been assessed at £1 899 and £1 459, respectively, and 75% of the assessed amounts have been paid.

2.2.5 The Environment Agency has submitted a claim for £401 868 for costs incurred by the National Rivers Authority in respect of staff costs, transport and equipment hire up to 1 April 1996. This claim is being examined by the experts engaged by the Skuld Club and the 1971 Fund. A further claim is expected.

2.2.6 The Milford Haven Standing Conference on Anti-Oil Pollution has presented a claim for £1 328 159 in respect of costs incurred for the provision of booms, skimmers and spill response craft in the clean-up operations. Texaco Limited, Gulf Oil Refining Ltd, Elf Oil (UK) Ltd and the Milford Haven Port Authority are represented on the Standing Conference, which was set up to provide a spill response capability within Milford Haven. Following queries raised by the experts engaged by the Skuld Club and the 1971 Fund, the claimant has provided additional supporting information which is being examined by the experts.

2.2.7 Two charities, Care for the Wild and the South Devon Seabird Trust, have claimed compensation of £4 962 and £714, respectively for cleaning birds. The latter claim has been approved and paid for the amount claimed. The former claim is being assessed.

2.2.8 The Joint Nature Conservation Committee, a government funded body set up to ensure a co-ordinated approach by the nature conservation bodies in England, Scotland, Wales and Northern Ireland, has submitted a claim for £11 336 for the cost of advisory personnel and for the cost of a diving survey which was undertaken to establish potential damage to marine species in the vicinity of the casualty. The Dyfed Wildlife Trust has presented a claim for £70 859 for the cost of wildlife surveys in the affected area, for cleaning oiled birds and for property damage. These claims are being examined.

2.2.9 The National Trust has presented a claim for £37 135 in respect of the cost of monitoring the contamination of, and co-ordinating access to, sections of the shoreline within its area of responsibility. A number of queries have been raised in respect of this claim, which will be examined in the light of further information provided by the claimant.

2.2.10 The French Government has claimed compensation for FFr1 491 337 (£161 000) in respect of the provision of two vessels which assisted in offshore pollution response operations. This claim is being examined.

2.2.11 Four County Councils in Ireland have submitted claims for clean-up costs totalling Irish Pounds 72 734 (£71 000). These claims are being examined by the experts engaged by the 1971 Fund and the Skuld Club.

2.3 Property claims

2.3.1 As a result of the incident, boats and moorings in Milford Haven became contaminated. Ninety claimants have submitted claims for compensation for cleaning costs. These claims have been approved for £136 586, and most of them have been paid in full by the Skuld Club.

2.3.2 A number of buildings located close to the affected beaches were contaminated by wind-blown oil. Thirty-eight claims relating to such damage have been approved for a total of £23 047. The Skuld Club has paid a total of £19 624 in compensation in respect of these claims.

2.3.3 Claims have been received for damage to the carpets of shops and homes located on the seafront of the most severely polluted areas, for damage to clothing worn and equipment used by personnel involved in the clean-up operations and for the replacement of trees and shrubs damaged by wind-blown oil. In addition, claims have been submitted by the owners of private roads which have been damaged by the passage of heavy vehicles and equipment involved in the clean-up operations. Fifty-seven claims in these categories have been approved for a total of £45 188. The Skuld Club has paid a total of £40 814 in respect of these claims.

2.4 Fishery claims

2.4.1 Claims have been presented by 153 fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority are catching whelks and crustaceans. Some of the claims include damage to nets and the loss of pots. Claims from 120 fishermen have been approved for a total of £5 199 686. The Skuld Club has paid £3 905 304 in respect of these claims.

2.4.2 Claims from nine fishermen for lost fishing gear have been approved at £39 050. The Skuld Club has paid £27 940 in respect of these claims.

2.4.3 A claim has been presented by one oyster farmer whose stock was contaminated as a result of the spill and who has been prevented from selling oysters due to the fishing ban. Payments totalling £72 968 have been made by the Skuld Club to this claimant corresponding to 75% of the losses resulting from the destruction of the part of the stock that would normally have been harvested and sold each month since the incident.

2.4.4 Fourteen fish and shellfish processing companies and merchants have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. Of these, two companies trade in white fish, three in whelks and five in crustaceans, whereas two trade in cockles, and two in cockles and mussels from the Burry Inlet area. So far interim payments totalling £1 060 124 have been made by the Skuld Club to ten of these companies.

2.5 Claims from the tourism industry

Claims have been received from 288 operators in the tourism industry, such as hotels, bed and breakfast businesses, caravan parks, shops and restaurants, as well as from a sailing school, a water sports centre, a diving school and angling shops. Claims in this category have been approved for a total of £719 201, and payments for a total of £489 573 have been made by the Skuld Club to 110 claimants. The remaining claims are being examined. The majority of claims have come from small businesses providing bed and breakfast or self-catering accommodation.

3 Level of payment of claims

3.1 The Executive Committee decided at its 48th session to limit the Director's authority to make payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. At its 49th and 50th sessions the Executive Committee decided that the 1971 Fund's payments should, for the time being, remain limited to 75% of the damage actually suffered by the claimant.

3.2 At the Executive Committee's 52nd session, the United Kingdom delegation introduced document 71FUND/EXC.52/7/1 which contained two estimates of the total amount of the claims, a low estimate of £34 million and a high estimate of £49 million. The delegation noted that, as virtually all fishing bans had been lifted and the clean-up operations were nearly completed, there was now little uncertainty as to the amount of claims in these two sectors. With regard to tourism claims, the delegation had been advised by the Wales Tourist Board and by the claimants' advisers that the total amount of those claims was likely to be well below £9 million. The delegation noted that many claimants were concerned at the lack of progress towards payments at 100% of approved losses, especially as claims had been approved for a total of only £8.5 million. It was stated that while little use had yet been made of the special arrangement for payments at 100% of the approved claims in cases of financial hardship, it did not follow that individuals and small businesses were not suffering financial difficulties due to the reduced level of payments. It was further stated that few small businesses could afford to lose 25% of their income. The United Kingdom delegation urged the Executive Committee to increase the payment of approved claims to 100%.

3.3 A number of delegations considered, in view of the uncertainty as to the total amount of the claims, that an increase of the percentage payable was inappropriate at that stage.

3.4 The Executive Committee decided that the 1971 Fund's payments should for the time being remain limited to 75% of the damage actually suffered by the respective claimants as assessed by the experts engaged by the 1971 Fund and the Skuld Club. It was further decided that this matter should be reviewed at the Committee's 53rd session. The Committee instructed the Director to obtain as much information as possible about the total amount of the claims and in particular the amount of the salvage claim (document 71FUND/EXC.52/11, paragraph 3.6.22).

3.5 In response to this decision the United Kingdom delegation stated that it understood the concern regarding the salvage claim and supported the view that the Director should endeavour to obtain more information on this potential claim. The delegation also urged the Director to try to quantify the total amount of the claims for the Committee's next session. It was stated that if, after such a quantification, it appeared that there was still an apparent risk of the 1971 Fund's limit being exceeded, CRISTAL should be notified of the possible need for additional funding. The United Kingdom delegation also invited delegations to consider the consequences for claimants of fluctuations in the value of the SDR.

3.6 In accordance with the Executive Committee's instructions, the Director has tried to obtain further information about the total amount of the claims. The information available can be summarised as follows:

It is estimated that the total cost of the clean-up operations will be £23 million. Some small scale clean-up is still being carried out, but the cost of these operations is not significant.

Fishery claims have so far been approved for £5.2 million. Pending and rejected claims in this category amount to £7 million. It is possible that further fishery claims will be submitted. It has been suggested that fishermen may claim compensation for damage to fish stocks. Four claims amounting to £53 974 have been submitted for losses resulting from an alleged reduction in catches of squid and whitefish in the Bristol Channel, although the claimed amounts may be increased, and a couple of further claims in this category are expected for relatively small amounts. It would be prudent, therefore, to recognise that further claims in the fishery sector might be presented for significant amounts.

In the tourism sector claims have been approved for £720 000. The pending claims amount to some £627 000. It is still difficult to determine the amount of further claims in this category. In March 1997 the Claims Handling Office sent letters to all potential claimants in this category who had requested claim forms but had not yet submitted claims. Of 580 potential claimants, 132 have replied. Of those who replied 74 stated that they would not present any claim, whereas 58 stated that they would.

It is still not known whether any claim will be made against the 1971 Fund for the cost of the operations relating to the salvage of the *Sea Empress* and her cargo and, if so, in what amount. In the document presented by the United Kingdom delegation to the Executive Committee's 52nd session (document 71FUND/EXC.52/7/1) an amount of £7 million had been included for such a claim.

There may also be certain payments for interest and fees of advisers and experts engaged by the claimants, but it is not possible at this stage to give an estimate of the amounts involved.

3.7 It will be recalled that, in previous cases, the Executive Committee had taken the position that it was necessary to exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of a particular incident would exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was also recalled that the Committee had expressed the view that it was necessary to strike a balance between the importance of the 1971 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

3.8 Although more information is available now than at the time of the Executive Committee's 52nd session, there is still a degree of uncertainty as to the total amount of the claims. This uncertainty relates in the Director's view to potential claims from the fisheries and tourism sectors, and in respect of the potential salvage claim. In view of the Committee's position at previous sessions as to the need for caution, the Director considers that he is unable to recommend an increase of the level of payments over 75% at this time.

4 Claims submitted to the Executive Committee for consideration

4.1 Criteria for the admissibility of claims for pure economic loss

4.1.1 By endorsing the Report of the 7th Intersessional Working Group, the Assembly laid down certain criteria for the admissibility of claims for pure economic loss (document FUND/A.17/35, paragraph 26.8). These criteria can be summarised as follows.

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

To qualify for compensation for pure economic loss, there must be a reasonable degree of proximity between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the *sole* reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether the criterion of reasonable proximity is fulfilled, the following elements are taken into account:

- ◆ the geographic proximity between the claimant's activity and the contamination
- ◆ the degree to which a claimant was economically dependent on an affected resource
- ◆ the extent to which a claimant had alternative sources of supply or business opportunities

- ◆ the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.

The 1971 Fund also takes into account the extent to which a claimant was able to mitigate his loss.

4.1.2 At its 50th session, the Executive Committee decided that the criteria for the admissibility of claims adopted in the *Haven* case were applicable to the tourism claims from the directly affected area between the Gower peninsula and St David's (document 71FUND/EXC.50/17, paragraphs 3.12.7-3.12.10). According to these criteria, it would not be reasonable to make a distinction dependent on the type of goods sold, except in respect of shops selling goods which were not normally bought by tourists (such as furniture and cars). Furthermore, each claim should be considered on its own merits, and the decisive criterion should be whether there was a link of causation (a reasonable degree of proximity) between the loss or damage and the contamination resulting from the *Sea Empress* incident.

4.1.3 As regards businesses in the tourism sector which were not located close to the affected coast but some distance inland, the Committee considered that special attention should be given to the degree of dependency of the business on the affected resource, ie the polluted coast, when assessing whether the criterion of proximity was fulfilled. In the Committee's view, one important element was the distance between the location of the business and the coast, as well as the time required by tourists to reach the coast, and the outcome of this assessment might vary depending on the type of business being considered.

4.1.4 With respect to claims from businesses located outside the area directly affected by the oil, ie north of St David's to Newport and Cardigan and east of the fishing exclusion zone on the Gower peninsula, the Committee noted that many potential visitors would not distinguish between the area south of St David's and the area to the north when deciding whether to refrain from taking a holiday in Pembrokeshire due to the oil spill. For this reason, the Committee took the view that businesses in the tourism sector north of St David's could also qualify for compensation, provided that there was a reasonable degree of proximity between the oil spill and the reduction in tourism revenue. It was stated that the further away from the contaminated coast the business was conducted, the greater the likelihood that the criterion of a reasonable degree of proximity would not be fulfilled.

4.1.5 The Director has thought it appropriate to submit to the Executive Committee for consideration certain claims for pure economic loss resulting from the *Sea Empress* incident. In particular, he invites the Committee to consider the admissibility of some of these claims where the claimant's activity is one or two steps further away from the contamination in the chain of businesses affected directly or indirectly by the oil spill, compared to, for example, restaurants, hotels, guest houses, caravan sites, public houses, shops at coastal resorts and tourism attractions which sell their goods and services directly to tourists. Another important factor might be whether the goods or services provided by the claimant are specifically targeted at tourists, or whether these goods or services are also used by the local population.

4.2 Claim by a haulage company

4.2.1 At its 52nd session, the Executive Committee considered a claim for £71 212 presented by a haulage company for loss of income suffered as a result of the company not being able to use one of its vehicles which had been specifically modified for the collection of wheelks (document 71FUND/EXC.52/7/Add.1, paragraph 3).

4.2.2 The Committee recalled that a similar claim in the context of the *Braer* incident had been considered by the Executive Committee at its 37th session, held in October 1993 (ie before the sessions of the 7th Intersessional Working Group). The relevant paragraphs of the Record of Decisions read as follows (document FUND/EXC.37/3, paragraphs 4.2.14 - 4.2.16):

The Executive Committee considered a claim by a haulage company based on Shetland which transported salmon from three farms located within the exclusion zone. It was noted that the company maintained that as a result of the imposition of the exclusion zone and the destruction of the 1991 salmon intake, its vehicles had not been fully loaded on

the outward journey from Shetland. The Committee also took note of the fact that the company, which made wooden pallets on which goods were transported, maintained that there had been a reduction in the number of pallets required.

The Executive Committee decided that the losses allegedly suffered by this claimant as a result of a reduction in the demand for transport services could not be considered as "damage caused by contamination" and that this part of the claim should therefore be rejected.

As regards the part of the claim relating to losses allegedly suffered as a result of a reduction in the number of pallets required, the Executive Committee instructed the Director to examine whether the losses allegedly suffered could be considered as "damage caused by contamination" on the basis that this reduction was due to the destruction of the 1991 salmon intake or the imposition of the exclusion zone which had prevented the harvest of the 1992 salmon intake. The Committee authorised the Director to settle this part of the claim, if and to the extent that this question were to be answered in the affirmative.

4.2.3 At its 52nd session, the Committee noted that the Director had taken the view that the claim by the haulage company presented in the *Sea Empress* case fulfilled the criteria for admissibility in that the claimant's business was an integral part of the economic activity of the area affected by the oil spill, that as regards the particular vehicle the claimant was dependent on the affected resource since it was a specialised vehicle for transporting whelks from the fishermen to the fish processor, and that both the fishermen and the fish processor had received compensation for losses following the fishing ban.

4.2.4 A number of delegations agreed with the Director's analysis that the loss suffered by the claimant should be considered as damage caused by contamination and that therefore the claim was admissible in principle. Other delegations considered, however, that there was not a sufficient degree of proximity between the loss suffered by the claimant and the contamination.

4.2.5 The Executive Committee instructed the Director to examine this claim further and to submit the claim for renewed consideration at the Committee's 53rd session (document 71FUND/EXC.52/11, paragraphs 3.6.17).

4.2.6 As instructed by the Executive Committee, the Director has examined this claim further. The facts as presented by the claimant can be summarised as follows:

The haulage company operates 11 vehicles for general transport throughout the United Kingdom from its base in Narberth, 10 kilometres from Saundersfoot in the area affected by the oil spill. The claim relates to loss of income suffered as a result of the company not having been able to use one of its vehicles which had been equipped specifically for the collection of whelks from Saundersfoot and their transportation to a fish processor in New Quay some 60 km from Narberth.

A fish processor purchasing whelks from the area affected by the *Sea Empress* incident had requested that the company should provide a vehicle with the means to lift 500kg bags, in order to reduce handling costs. The company purchased a crane in November 1995 and fitted it to one of its trucks to accommodate this request. The fitting of the crane involved a substantial change in the truck's characteristics and reduced its carrying capacity. The cost of purchasing and fitting the crane was £6 428, with a further £3 260 for modifying the vehicle. The company had an oral agreement with the fish processor that the latter would use the company as the sole transporter of whelks. As the whelk fishery was predicted to last three years, the company considered that the expenditure was justified.

The crane was used to lift the 500kg bags directly from the boats on to the truck. Previously the catches had been landed in 30kg bags which were carried from the boats and loaded manually on to the truck. When the number of boats involved in whelk fishing

increased, however, it was found that this method was too slow, resulting in the boats having to wait to land their catches. Use of the crane speeded up the landing of the whelks, thereby reducing the delay for the fishing boats. When the catches increased to such a volume that the vehicle could not carry all the whelks, a smaller flatbed truck was also used, and the crane was then used to load the smaller truck. Following the lifting of the ban, the truck with the crane was once again used for the transportation of whelks. The first collection of whelks took place on 10 September 1996, some twelve days after the lifting of the ban.

The specialised vehicle could not be used in other areas of the company's business activities and was virtually unused during the period of the fishing ban. The only businesses that need vehicles with a crane of this type are building contractors and scrap metal dealers, who usually have their own vehicles.

4.2.7 The Director makes the following assessment of the admissibility of the claim presented by the haulage company. The claimant conducted his activity in the area affected by the spill. In the Director's view, the claimant's business is an integral part of the economic activity of the affected area. As regards the truck to which the claim relates, the claimant was dependent on the affected resource, since the truck was specially adapted for the transportation of whelks directly from the fishing boats to the fish processor. Both the whelk fishermen and the fish processor have received compensation for losses resulting from the fishing ban. The Director considers that the loss suffered by the claimant should be considered as damage caused by contamination and that therefore the claim is admissible in principle.

4.3 Cash and carry wholesaler

4.3.1 A claim for loss of profit has been presented by Booker Belmont Wholesale Ltd, a company based in Wellingborough (Northamptonshire), some 450 kilometres from Milford Haven. From 169 depots in England and Wales, five of which are located in Wales, the company sells through a cash and carry system a wide range of goods, such as groceries, frozen food, tobacco, confectionery, cleaning materials and hardware products, to some 1 700 United Kingdom customers in the hotel and catering trade, and to some 670 retailers in the United Kingdom.

4.3.2 In 1995 the company's turnover in respect of all its operations in England and Wales was £2 278 million. The turnover of the company's depot in Haverfordwest, located some 11 kilometres from Milford Haven, was £8 454 000, ie approximately 0.37% of the company's total turnover.

4.3.3 The company has maintained that its Haverfordwest depot had a drop in sales of £801 400 during the period 15 February - 3 October 1996 compared with the same period in 1995. It has argued that, but for the *Sea Empress* incident, the Haverfordwest depot would have achieved the same increase in its turnover during that period as the other four depots in Wales, ie 11.5%. The company has claimed compensation for loss of profit of £29 259 for that period.

4.3.4 In the Director's view, the company's business does not form an integral part of the economic activity of the area affected by the spill, since only a very small part of its activity is carried out in that area. The company is not dependent on the affected resource. The company is a supplier to businesses in the affected area. The reduction in turnover in the Haverfordwest depot is a more indirect result of the reduction in tourism than corresponding losses suffered by hotels and restaurants. For these reasons, the Director considers that the loss allegedly suffered by the company should not be considered as damage caused by contamination and that the claim should therefore be rejected.

4.4 Upton Farm Frozen Foods Ltd

4.4.1 A claim for £13 664 has been submitted by an ice cream and frozen food supplier, Upton Farm Frozen Foods (Ltd), relating to loss of profit for the period February - October 1996, allegedly due to the reduction in trade caused by the *Sea Empress* incident. The claimant has submitted the following information:

The company, whose business is based in Pembroke Dock, trades as a wholesaler of frozen food and ice cream in the area affected by the oil spill (Saundersfoot, Tenby, Pembroke, Milford Haven and the Dale peninsula). The customers are mainly hotels, restaurants, cafes and tourist attractions which all depend heavily on tourism. The company's ice cream sales represent a significant proportion of the local ice cream market. The total sales of the company during the 12 month period ended 31 October 1996 were £1 218 000, of which £277 000 related to ice cream sales. The five month period April - August normally accounts for 69% of the claimant's annual turnover. There are no alternative business opportunities. The company is an agent for two other ice cream manufacturers in addition to supplying its own produce.

4.4.2 The Director considers that the company's alleged losses are a more indirect result of the reduction in tourism than corresponding losses suffered by hotels, restaurants and tourism attractions. Although the company is located in the area affected by the spill and forms an integral part of the economic activity of that area, the Director considers that there is not a reasonable degree of proximity between the alleged loss and the contamination. For this reason he takes the view that the claim should be rejected.

4.5 Pembrokeshire Foods Ltd

4.5.1 A claim has been received from another supplier of frozen foods, Pembrokeshire Foods Ltd, located in Haverfordwest. The company supplies frozen food to hotels, guest houses, restaurants, caravan sites and public houses. The claim, which totals £7 061, relates to losses allegedly incurred during the period April-August 1996 as a result of the decline in the number of tourists in the affected area.

4.5.2 The company's turnover was in 1994/1995 £1 163 403 and in 1996/1997 £1 150 535. The company has maintained that its customers are heavily dependent on tourism. The company has argued that it had no possibility of mitigating the losses by selling outside its normal marketing area, since due to the distance of such other markets from the company's depot, it could not match the price and service offered by wholesalers in those areas. It has also been stated that the company could not seek alternative business opportunities, since all its trucks are refrigerated and could not be used for any other business.

4.5.3 The Director considers that the company's alleged losses are a more indirect result of the reduction in tourism than corresponding losses suffered by hotels, restaurants and tourism attractions. Although the company is located in the area affected by the spill and forms an integral part of the economic activity of that area, the Director considers that there is not a reasonable degree of proximity between the alleged loss and the contamination. For this reason he takes the view that the claim should be rejected.

4.6 Postcard manufacturer

4.6.1 The claimant, whose business is located in Haverfordwest, manufactures and distributes postcards of scenes in Pembrokeshire to various tourism-related businesses, mainly in Pembrokeshire. The claimant takes the photographs, prints the cards and sells them to retail outlets such as post offices, newsagents, beach shops, and restaurants.

4.6.2 The total number of postcards sold during the period March-September was 740 900 in 1994, 737 000 in 1995 and 695 000 in 1996. The reduction in sales between 1995 and 1996, 42 000, represents a fall of 5.7%. The claim is for £1 260 and relates to loss of profit during that period in 1996.

4.6.3 The claimant has stated that the fall in sales in the early part of 1996 was due mainly to cancellation of and reduction in previous orders directly after the *Sea Empress* incident, when retailers anticipated a decline in the number of tourists. He has also stated that there was subsequently an increase in sales later in the season, in particular a marked increase in small orders, as retailers sold more cards than they had anticipated during the early part of the season.

4.6.4 The experts engaged by the 1971 Fund and the Skuld Club have expressed the view that any reduction in the number of tourists visiting Pembrokeshire would be expected to have a direct effect on the number of postcards purchased. They have stated that the fact that the postcards depict scenes

of Pembrokeshire limit the market to that region and that the claimant is therefore dependent on sales to tourists coming to Pembrokeshire. The experts have checked the sales made by the claimant to a number of retailers located in the area where there was a significant drop in the number of visitors as a result of the incident. Several of these retailers have also themselves claimed compensation for loss of income due to the reduction in tourism. The experts have also noted that following the incident the claimant made attempts to develop postcards suited to tourists in some other part of Wales, but these attempts were only moderately successful.

4.6.5 The Director makes the following assessment of the admissibility of this claim. The claimant's business is located in the area affected by the oil spill and forms an integral part of the economic activity of the area. The product offered by the claimant, ie postcards, is specifically targeted at tourists. The claimant had no realistic possibility of selling the postcards elsewhere, and the business was therefore highly dependent on tourism. The Director considers, therefore, that there is a reasonable degree of proximity between the alleged loss and the contamination. For this reason, he takes the view that the claim should be accepted as admissible in principle.

4.7 Laundry service

4.7.1 A claim has been submitted by a company (Dyfed Cleaning Services Ltd) located in Milford Haven which provides linen supplies and laundry services to hospitals and the hotel and catering trade. The company's services cover the whole of south west Wales, ie a larger area than that affected by the reduction in tourism resulting from the *Sea Empress* incident. The claim for £6 694 relates to loss of profit during April and May 1996, allegedly as a result of a decline in the number of visitors in the area due to the *Sea Empress* incident. The company's turnover was £1 163 403 in the period 1 April 1994–31 March 1995 and £1 150 535 in the corresponding period 1996/97, ie a drop of 1.1%.

4.7.2 The Director makes the following assessment of the admissibility of this claim. The company is located in the area affected by the spill, the company's services are partly rendered to customers within the area and the company forms an integral part of the economic activity in the area. The claimant's business is, however, only partly dependent on customers in the tourism sector. The loss allegedly suffered by this claimant is a more indirect result of the reduction in tourism than corresponding losses suffered by hotels, restaurants and tourism attractions. For this reason, the Director considers that there is not a reasonable degree of proximity between the alleged loss and the contamination and that the claims should therefore be rejected.

4.8 Decrease in value of an island

4.8.1 A claim for £154 000 has been presented by a trust acting for the owner of Thorne Island, which is located in the entrance to Milford Haven, for losses allegedly suffered as a result of not having been able to sell the island at the price expected before the *Sea Empress* incident. A hotel located on the island was to have been included in the sale.

4.8.2 The claimant has submitted the following information in support of the claim:

The claimant intended to put up the island for sale in the beginning of 1996. The District Valuer^{<1>} had agreed prior to the *Sea Empress* incident to a valuation of the island at £285 000. The claimant's solicitor had expressed the view that the value of the island was in the region of £300 000–350 000. The island was offered for sale on the basis of offers over £275 000. After a significant advertising campaign and considerable media interest, only two offers were received during the summer of 1996, for £58 000 and £121 000, respectively. Later, an offer of £125 000 was also received.

4.8.3 It should be noted that in May 1996 the claimant offered to sell the island to the 1971 Fund and that the Director informed the claimant that the Fund did not buy properties.

<1> A chartered surveyor appointed by the United Kingdom Commission of Inland Revenue to be the primary provider of advice and assessments on property values to the Government and other public bodies.

4.8.4 The Committee will recall that a similar claim was considered in connection with the *Braer* incident. In that case, the owner of a farm located on the cliffs below which the *Braer* went aground had claimed compensation for the difference between the value of the property in December 1992 (ie in the month before the *Braer* incident) as assessed by the claimant, and the offer made by a prospective purchaser. The Committee took the view that this claimant would in principle be entitled to compensation if and to the extent that the property had suffered an on-going loss of value as a result of the *Braer* incident. The Committee emphasised that there were many other factors which could have influenced the selling price of the property which were not related to the incident. The Director had obtained opinions on the matter from a chartered surveyor and from the District Valuer. The Committee endorsed the Director's position that since the District Valuer and the chartered surveyor had expressed the opinion that there was no permanent damage to the farm but only a possible depreciation of a psychological nature, the farmer was not entitled to compensation for on-going diminution of value (document FUND/EXC.39/8, paragraphs 3.3.4 - 3.3.7).

4.8.5 The Director makes the following assessment of the admissibility of the claim relating to losses allegedly suffered as a result of a decrease in value of Thorne Island. The island was cleaned after the oil spill, and there is no remaining contamination of any significance. There is therefore no indication that any form of permanent damage has been caused to the island. The Director is of the view that the depreciation in value, if any, which would be of a psychological nature, should not be considered as damage caused by contamination. For this reason he proposes that the claim should be rejected.

4.9 The Youth Hostel Association

4.9.1 A claim for £18 273 has been presented by the Youth Hostel Association (England and Wales) Ltd (YHA) through its Wales regional office located in Cardiff, for loss of income for the period 1 March - 31 August 1996.

4.9.2 The YHA, which has its headquarters outside Wales, owns and operates a network of 240 hostels in England and Wales. The hostels offer a basic standard of accommodation at a low price. In spite of the term "youth hostel" the hostels accommodate people of any age looking for inexpensive holidays, for example back packers, families and, in some hostels, school groups.

4.9.3 The YHA is organised so that each regional office is required to maximise profitability in order to obtain development funding from the YHA. The Wales regional office of the YHA is responsible for 45 hostels in Wales, eight of which are located in Pembrokeshire. Of these eight, seven are located on the coast and one within two miles of the coast. These eight hostels are promoted on the basis that they are located very close to the sea and the coastal path within the Pembrokeshire Coast National Park. The claim as presented covers only these eight hostels. The claimant has stated that it may submit claims covering other hostels.

4.9.4 The youth hostels owned and operated by YHA in England and Wales had 1.35 million overnight stays in 1993 and 1994, 1.39 million in 1995 and 1.43 million in 1996. There was, therefore, an increase of 3.16% in 1996 compared with 1995, and an increase of 5.09% compared with the average of the three previous years.

4.9.5 The youth hostels owned and operated by YHA in England and Wales had 1.35 million overnight stays during the period March-August 1993 and 1994, 1.39 million in 1995 and 1.43 million in 1996. There was therefore an increase of 3.16% for that period in 1996 compared to 1995, and an increase of 5.09% compared with the average of the three previous years during that period.

4.9.6 The youth hostels in Wales operated by the regional office had an increase of 2.37% in the number of overnight stays during the period March-August 1996, compared to the same period in 1995. This is less than the increase in the total overnight stays in the hostels operated by YHA in that period. The Wales regional office has maintained that this lower increase was due to the impact of the *Sea Empress* incident. The eight hostels in Pembrokeshire covered by the claim recorded an average drop in the number of overnight stays of 8.2% during the period March-August 1996, compared to the same period in 1995. The office has stated that as a result of the drop in the number of overnight stays in these eight hostels, the overall increase for all hostels in South Wales was only 0.66% during that period.

4.9.7 The Director makes the following assessment of the admissibility of this claim. The hostels operated by the Wales regional office located on the coast or very close to it satisfy in his view the criterion of geographic proximity between the claimant's activity and the pollution. The operations of the hostels covered by the claim are economically dependent on the affected resource. The fact that the eight hostels in question are located within the Pembrokeshire Coast National Park makes them unique, and therefore the other hostels operated by the Wales regional office would not have been an acceptable substitute for many of those who intended to go to Pembrokeshire. The Director takes the view that the operations of the eight hostels covered by the claim form an integral part of the economic activity within the area affected by the spill.

4.9.8 For the reasons set out above, in the Director's view, losses suffered as a result of the reduction in occupancy of the eight youth hostels in Pembrokeshire should be considered as damage caused by contamination and would therefore be admissible in principle, provided that when assessing the quantum of the loss, deduction should be made for any increase in occupancy in the other 37 youth hostels run by the Wales regional office which resulted from people not wishing to use the hostels in Pembrokeshire.

4.10 Fire brigade

4.10.1 A claim for £150 000 has been presented by a county fire brigade for expenses incurred in providing fire fighting cover during the clean-up and salvage operations. The claim includes the costs of labour and the use of vehicles.

4.10.2 The fire brigade has given the following information in support of its claim:

The fire brigade's intervention had two distinct phases, one whilst the *Sea Empress* was at the entrance of Milford Haven Port, and the second whilst she was alongside the jetty inside the port of Milford Haven. Throughout the first phase, the fire brigade staff manned fire-fighting tugs in the vicinity of the *Sea Empress* to provide fire fighting cover for:

- ◆ the tugs which were holding the tanker which was continuously leaking crude oil into the sea,
- ◆ the operations to save the tanker and her cargo, and
- ◆ to react in the event of fire or explosion.

When the tanker was alongside the jetty it was found that the ship was severely damaged and that a large part of its cargo had been lost, although the effect of the pressure of the sea water surrounding the ship caused many thousands of tonnes of crude oil to remain in the vessel's ruptured tanks. The operation to tranship the remaining crude oil to other tankers alongside the *Sea Empress* was technically difficult and potentially hazardous. During the second phase, at the request of the Milford Haven Port Authority, the fire brigade provided 24 hour emergency standby cover for this operation.

The fire brigade also provided safety cover for helicopters engaged in the salvage operations, transport for helicopter crews, water supply to the jetty, lighting units to beach cleaning parties and advice on safe working practices and decontamination.

Throughout the clean-up operations, the fire brigade was a member of the safety group within the Joint Response Centre (JRC) and maintained a continuous presence of at least two fire brigade officers, although on occasions this presence increased to six officers. One of the duties of the safety group was to identify potential hazards and to react physically or to prepare comprehensive contingency plans to deal with the potential emergencies. On at least two occasions these plans were implemented when it was considered that, due to the severe weather conditions in the area, there was a real possibility that the ship would break-up. On these occasions measures were taken to position men and equipment near village communities that might have to be evacuated. The fire brigade officers at the JRC also provided advice on the method for the transhipment of the cargo and were amongst those who authorised the transhipment of the cargo from the *Sea Empress*.

4.10.3 The Director takes the view that the admissibility of this claim cannot be considered until the content of any salvage claim is known.

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;
 - (b) to give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident.
 - (c) to take a decision on the level of the 1971 Fund's payments;
 - (d) to give the Director such instructions as it may deem appropriate in respect of the admissibility of claims:
 - (i) by a haulage company (paragraph 4.2)
 - (ii) by a cash and carry wholesaler (paragraph 4.3)
 - (iii) by Upton Farm Frozen Foods Ltd (paragraph 4.4)
 - (iv) by Pembrokeshire Foods Ltd (paragraph 4.5)
 - (v) by a postcard manufacturer (paragraph 4.6)
 - (vi) by a laundry service (paragraph 4.7)
 - (vii) relating to a decrease in value of an island (paragraph 4.8)
 - (ix) by the Youth Hostel Association (paragraph 4.9)
 - (x) by a county fire brigade (paragraph 4.10); and
 - (e) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.
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