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COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE

Note by the Director

Summary:

Most tourism claims and fishery claims have been settled out of court and paid in full. One Village Fishery Association and 506 other claimants have taken legal action against the 1971 Fund. Most claims for clean-up have also been settled and paid in full but some outstanding issues remain. The shipowner's insurer has requested reimbursement from the 1971 Fund for payments made in respect of preventive measures associated with salvage operations. The shipowner is requesting reimbursement for clean-up claims. These claims cannot be paid before the limitation amount applicable to the *Sea Prince* has been determined.

Action to be taken:

Decide whether to authorise the Director to agree with the shipowner and his insurer the conversion rate SDR/Won to be applied for the determination of the limitation amount in Won.

1 Introduction

- 1.1 The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with some 85 000 tonnes of Arabian crude oil, grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area. Some 5 000 tonnes of oil was spilled as a result of the grounding. Most of the oil was carried eastward by currents and some oil eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese Oki islands.
- 1.2 A Japanese salvage company was engaged by the shipowner to salvage the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95). The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the

cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column if the oil were to be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship would break up during refloating. In view of this the salvage contract under Lloyds Open Form 95 was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters but sank close to the Philippines without any further oil spillage.

- 1.3 The *Sea Prince* was entered with the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

2 Claims for compensation

- 2.1 All claims relating to clean-up operations have been settled at Won 19 900 million (£11.3 million). These claims have been paid in full by the shipowner and the UK Club, who have presented subrogated claims to the 1971 Fund.
- 2.2 In August 1996 the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. At the rate of exchange applicable at that time, this payment represented less than 25% of the amounts for which the Club had presented sufficient supporting documentation.
- 2.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total of ¥360 000 (£2 160). This claim was accepted in full by the 1971 Fund.
- 2.4 In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£649 000) and the other for costs totalling Won 135 million (£73 900) associated with additional clean-up undertaken by the shipowner in early 1998. The studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents.
- 2.5 The Director took the view that the post-spill environmental studies appeared to duplicate the work of sampling and analysing seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. The Director therefore rejected the claim for the cost of these studies.
- 2.6 On the basis of surveys carried out by the 1971 Fund's experts prior to and during the period of the additional clean-up, these experts took the view that the additional clean-up operations were not technically justified. Although buried oil was found at most of the locations and subsequently subjected to further cleaning, the quantities were small, the oil was hard to find and the contamination was sporadic. Not all the oil samples collected matched the oils spilled from the *Sea Prince* and the *Honam Sapphire*. The experts concluded that the remaining oil did not pose any threat to fisheries and tourism nor did it represent an aesthetic problem. Furthermore, because of the difficulty of finding and getting access to the remaining oil, they considered that the clean-up would involve harsh, intrusive and seriously disruptive methods likely to cause more damage than the oil itself. In the light of the experts' opinion, the 1971 Fund informed the shipowner that the Fund considered that the cost incurred for the additional clean-up did not qualify for compensation.
- 2.7 Most claims in the tourism sector have been settled for Won 538 million (£306 000) and paid in full.

- 2.8 Most of the claims in the fisheries sector have also been settled and paid in full in the total amount of Won 17 000 million (£9.4 million).
- 2.9 In July 1998 a Village Fishery Association and 506 individual claimants took legal actions against the 1971 Fund claiming Won 500 000 (£285) for each fisherman. The basis of the claims was not made clear by the plaintiffs, 211 of whom had concluded settlements of their claims before the action was commenced. On 17 March 2000, 75 of these claimants withdrew their claims from the proceedings and it is understood that the other 136 settled claims will be withdrawn from the proceedings in the near future. The remaining claims in the actions were rejected by the 1971 Fund and by the limitation Court. The most significant claims in the latter category are those in respect of 167 operators of large stow nets whose original claims were for Won 5 213 million (£3 million).
- 2.10 The UK Club presented a claim on the basis of subrogation for US\$8.3 million (£5.3 million) relating to the cost of preventive measures associated with salvage operations.
- 2.11 The UK Club also claimed on the basis of subrogation for reimbursements made to the shipowner for payments made by him mainly to Korean clean-up contractors for US\$22 076 954 (£14 046 000) corresponding to Won 24 031 688 854 plus ¥357 214.
- 2.12 Since the 1971 Fund has made an account payment to the UK Club of £2 million, the total amount of the Club's claim in the limitation proceedings is approximately £16.6 million.
- 2.13 The claims situation as at 20 March 2000 is shown in the tables set out below.

Claims settled and paid in full		
Claims category	Amounts originally claimed Million Won	Settlement amounts Million Won
Clean-up	21 544	19 919
Fishery claims	146 521	19 500
Tourism and agriculture	4 759	538
Total	172 824 (£98.4 million)	39 957 (£22.8million)

Claims pending in court (other than shipowners's/UK Club's claims)			
Claims category	Number of claims	Original claim amounts	Settlement amounts
Fishery claims - Settled claims	91	4 047 195 419	547 294 203
- Rejected by the Fund	325	5 209 247 934	-
Non-fishery claims rejected by the Fund	91	700 698 000	-
Total	507	9 957 141 353 (£5.7 million)	547 294 203 (£312 000)

- 2.14 The shipowner and the UK Club have claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£4.7 million).

3 Limitation proceedings

- 3.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 20 900 million (£11.8 million) at the exchange rate applicable on 27 March 2000. The limitation fund has not yet been constituted and the limitation amount in Won has therefore not yet been fixed.

- 3.2 In June 1998 the Court delivered its decision accepting the assessments made by the 1971 Fund's experts of the unsettled fishery and non-fishery damage claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner has lodged opposition to this decision.
- 3.3 Outstanding issues in the limitation proceedings are the subrogated claims by the shipowner/UK Club in respect of the preventive measures associated with salvage operations and clean-up operations carried out by various contractors referred to in paragraphs 2.10 and 2.11. These claims were assessed by the Court at a total of US\$27.8 million (£17.7 million) and ¥4 million (£24 000). The 1971 Fund lodged objection to the Court's decisions concerning these items on the ground that there was insufficient supporting documentation.
- 3.4 At its 61st session the Executive Committee considered whether certain claims filed in the limitation proceedings had become time-barred *vis-à-vis* the 1971 Fund, namely a subrogated claim by the UK Club for payments made to various contractors, claims by three village fishery associations and a claim by the UK Club for indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/EXC.61/6). After a detailed discussion of the issues involved the Executive Committee decided that the UK Club's subrogated claim should be considered as not being time-barred. The Committee also decided that the claims of the three village fishery associations and the UK Club's claim for indemnification should be treated as not being time-barred (document 71FUND/EXC.61/14, paragraphs 4.5.16, 4.5.21 and 4.5.26).

4 Recent developments

4.1 The UK Club's claim for costs of preventive measures associated with salvage operations

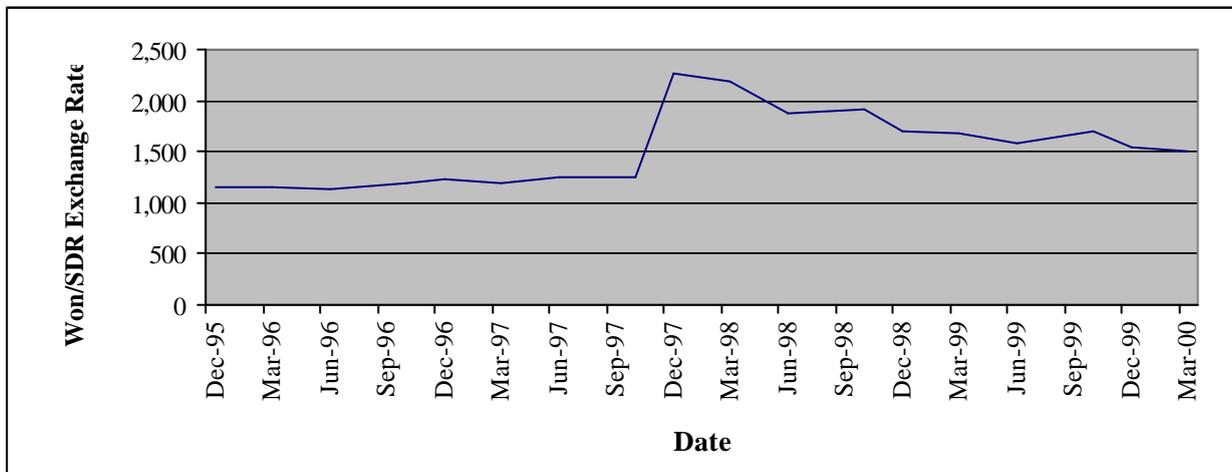
The UK Club presented a claim on the basis of subrogation for US\$8.3 million (£5.3 million) relating to the cost of measures associated with the work carried out under the contracts related to salvage, maintenance of the wreck and wreck removal and pollution prevention. In September 1999 the UK Club provided various documents relating to these operations, including a report by its expert on the apportionment of costs between salvage/wreck removal and pollution prevention. The 1971 Fund's expert examined the Club's expert's report and the supporting documents. On the basis of this examination the Director approved the claim for a total of US\$6.6 million (£4.2 million) as set out in the table below.

Salvage activity	Total salvage costs US\$	Amount claimed for preventive measures US\$	Amount approved by the 1971 Fund US\$
Cargo removal	9 250 000	4 902 500	3 250 000
Maintenance of the wreck	1 196 213	598 107	598 107
Wreck removal	6 680 000	2 753 100	2 753 100
Total	17 126 213	8 253 707	6 601 207

4.2 Reimbursement of amounts paid by the shipowner

- 4.2.1 The 1971 Fund and the UK Club have recently held a series of meetings with the shipowner in the Republic of Korea. The purpose of these meetings was to verify all payments made by the shipowner in respect of clean-up operations and to reconcile those payments with the amounts approved by the 1971 Fund and the reimbursements made by the UK Club to the shipowner.
- 4.2.2 The UK Club has maintained that the total amount it has reimbursed the shipowner exceeds the shipowner's limit under the 1969 Civil Liability Convention. The UK Club has therefore requested that the 1971 Fund should reimburse the shipowner directly for the amounts that the shipowner has paid but not been reimbursed by the Club. The shipowner has requested reimbursement of Won 3 533 479 585 (£2 million) from the 1971 Fund.

- 4.2.3 The Director is assessing the claims in the light of the information obtained in Korea, with a view to agreeing the amount outstanding to the shipowner.
- 4.3 Determination of the limitation amount applicable to the *Sea Prince*
- 4.3.1 Under Article V.9 of the 1969 Civil Liability Convention (as amended by the 1976 Protocol thereto), the limitation amount applicable to the *Sea Prince*, 14 million SDR, should be converted into the national currency of the State concerned on the basis of the value of that currency by reference to the SDR on the date of the constitution of the shipowner's limitation fund.
- 4.3.2 The Director anticipates that once agreement has been reached between the 1971 Fund and the shipowner/UK Club on the admissible amount of the claim referred to paragraph 4.2.1, the only outstanding claims in the limitation proceedings will be the costs incurred by the shipowner relating to environmental studies and additional clean-up (cf paragraphs 2.5, 2.6 and 3.2). Until the Court renders its judgement on these claims there is no possibility of the Court determining the limitation amount applicable to the *Sea Prince*. The Executive Committee may wish to consider whether it would be appropriate to fix the limitation amount by means of an agreement between the 1971 Fund and the shipowner/UK Club.
- 4.3.3 In December 1995, when the 1971 Fund's payments of approved claims were limited to 25% and the shipowner made payments in respect of clean-up costs and the balance of fishery claims approved by the 1971 Fund, the average exchange rate was 1 SDR = Won 1 155. Subsequently, in June 1997, when the 1971 Fund increased its payments of approved claims to 50%, the average exchange rate was 1 SDR = Won 1 245, and in March 1998, when settled claims were paid by the Fund in full, the rate was 1 SDR = Won 2 191. The exchange rate at 27 March 2000 was 1 SDR = Won 1 492. The fluctuation in the Won between December 1995 and March 2000 is shown graphically below.



- 4.3.4 The Executive Committee has in several previous cases decided that the 1971 Fund normally required the establishment of the limitation fund in order to be able to pay compensation and that this requirement could be waived only in exceptional cases. In several cases in Japan, the Executive Committee has, however, waived this requirement, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amounts under the Civil Liability Convention in these cases (document 71FUND/EXC.40/8, paragraph 4.15).
- 4.3.5 The issue was considered by the Executive Committee in relation to the *Agip Abruzzo* incident. In that case the 1971 Fund's involvement was limited to the payment of indemnification. For this reason and in view of the practical difficulties encountered by the P & I insurer in attempting to constitute the limitation fund, the Committee decided, as an exception, to waive the requirement to establish the limitation fund and further decided that the point of the 1971 Fund's intervention

under Article 5.1(a) of the 1971 Fund Convention should be calculated on the basis of the rate of the Italian Lira *vis-à-vis* the SDR on the date of the Committee's decision (cf document 71FUND/EXC.40/8, paragraph 4.16).

- 4.3.6 The considerable devaluation of the Won during the period from the date of the incident resulted in a significant reduction in the amount that the 1971 Fund had to pay in pounds sterling. The Director considers it important that the amounts to which the shipowner/UK Club are entitled are paid by the 1971 Fund as soon as possible. It is likely that it will take several years before the Court will render a final decision determining the limitation amount. For these reasons, the Executive Committee may wish to consider authorising the Director to agree with the shipowner/UK Club on the exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince*, and for determining the amount of indemnification payable by the 1971 Fund under Article 5.1 of the 1971 Fund Convention.

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 decide whether to authorise the Director to agree an SDR/Won exchange rate with a view to establishing the limitation amount applicable to the *Sea Prince*; and
 - (c) to give the Director such other instructions as the Committee may deem appropriate in respect of this incident.
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