



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
63rd session  
Agenda item 3

71FUND/EXC.63/5/Add.1  
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## INCIDENTS INVOLVING THE 1971 FUND

### SEA EMPRESS

#### Note by the Director

<b>Summary:</b>	The Court of Appeal has reduced the fine imposed on the Milford Haven Port Authority (MHPA) from £4 million to £750 000.
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<b>Action to be taken:</b>	Give the Director instructions as appropriate.
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### 1 Introduction

- 1.1 Criminal proceedings were brought by the United Kingdom Environment Agency against two defendants, namely the Milford Haven Port Authority (MHPA) and the Harbour Master in Milford Haven at the time of the incident. Both defendants faced a charge that they caused polluting matter, namely crude oil and bunkers, to enter controlled waters, contrary to Section 85(1) of the Water Resources Act 1991, and that the discharge of crude oil and bunkers amounted to public nuisance. In addition, it was alleged that the MHPA had failed properly to regulate navigation and to provide proper pilotage services in the Haven. At the opening of the criminal trial on 12 January 1999 the Harbour Master pleaded not guilty, and that plea was accepted by the Environment Agency. The MHPA pleaded guilty to the charge under the Water Resources Act 1991 of causing or permitting polluting matter, namely oil and bunkers, to enter controlled waters, the penalty for which is imprisonment for a term not exceeding two years, or a fine, or both. The Port Authority pleaded not guilty to all other charges. Those pleas were accepted by the Environment Agency. As a result, the full trial did not take place. On 15 January 1999 sentence was passed. The MHPA was ordered to pay a fine of £4 million and to pay £825 000 towards the prosecution costs. In passing sentence the trial judge made a number of highly critical comments relating to the MHPA and the way in which it had operated the port.
- 1.2 MHPA appealed against the sentence.

## **2 Recent developments**

2.1 The Court of Appeal gave judgement on 16 March 2000<sup><1></sup>.

2.2 The Court of Appeal appreciated the trial judge's concern that very serious damage had been caused by the incident and that the MHPA could not escape a substantial fine. However, the Court of Appeal, in giving judgement, referred to several issues which were relevant to sentencing, including:

The MHPA's efforts to mitigate the damage by contributing to clean-up operations had to be borne in mind.

The considerable navigational risks of increasing numbers of larger vessels which had been coming into the port over recent years imposed obligations on the MHPA in connection with the management of the port, including duties in relation to categorisation of vessels and training of pilots. However, the Court of Appeal considered that the way in which the MHPA had addressed those matters following the incident, for example, by the introduction of new procedures for the entry of VLCCs and new methods of vessel categorisation, was also to be taken into account.

The port's finances also had to be given consideration, as well as the effects of a heavy fine. In addition, the importance of the port to the surrounding area was relevant, since local employment was generated by the port and oil refineries and the pollution had prejudiced the incomes of those in the area who depended upon fishing and tourism. The burden of paying the fine would fall on users of the port, through increased dues.

2.3 The Court of Appeal considered a detailed report which set out the financial position of the MHPA and which showed the impact that the fine would have over several years. The Court considered the borrowing capacity of the MHPA and found that, although that capacity was £36 million, only £6 million was available for non-capital purposes.

2.4 The Court of Appeal concluded that the trial judge had failed to give sufficient credit to the MHPA for its guilty plea, had failed to consider the impact of the fine on the MHPA's ability to perform its public function and had taken far too 'rosy' a view of the MHPA's financial position.

2.5 In these circumstances the Court of Appeal held that the original fine was excessive and should be reduced to £750 000, to be paid in three instalments on 1 June, 1 September and 1 December 2000.

2.6 The MHPA has already paid costs of £825 000 as ordered by the Court of first instance.

## **3 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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<1> The transcript of the Court of Appeal's judgement is not yet available. The summary in paragraphs 2.2 – 2.5 is based on notes taken by the 1971 Fund's solicitors at the appeal hearing.