



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971**

ADMINISTRATIVE COUNCIL
15th session
Agenda item 16

71FUND/AC.15/14/1
24 September 2004
Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are considered regarding the following incidents: <i>Vistabella</i> , <i>Iliad</i> , <i>Kriti Sea</i> and <i>Evoikos</i> .
Action to be taken:	Information to be noted.

1 *Vistabella*

(*Caribbean, 7 March 1991*)

- 1.1 While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago, sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of heavy fuel oil cargo was spilled as a result of the incident, and the quantity that remained in the barge is not known.
- 1.2 The *Vistabella* was not entered in any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFfr2 354 000 or €359 000 (£246 000). No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.
- 1.3 The 1971 Fund paid compensation amounting to FFfr8.2 million or €1.3 million (£890 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.
- 1.4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.
- 1.5 In a judgement rendered in 1996 the Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.

- 1.6 The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 Civil Liability Convention applied to the incident and that the Convention applied to the direct action by the 1971 Fund against the insurer even though in this particular case the shipowner had not been obliged to take out insurance since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.
- 1.7 The case was referred back to the Court of first instance. In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFfr8.2 million or €1.3 million (£890 000) plus interest.
- 1.8 The insurer appealed against the judgement. The 1971 Fund filed pleadings in the Court of Appeal of Basse Terre in February 2002. Court hearings were held in November 2002, November 2003 and in January 2004.
- 1.9 The Court of Appeal rendered its judgement in February 2004 in which it confirmed the judgement of the Court of first instance in March 2000. The insurer has not appealed to the Court of Cassation.
- 1.10 The 1971 Fund's French lawyer is considering what steps should be taken to enforce the judgement.

2 *Iliad*

(Greece, 9 October 1993)

- 2.1 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece), resulting in a spill of some 300 tonnes of Syrian light crude oil. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.
- 2.2 In March 1994 the shipowner's P&I insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3.0 million) with the competent court by the deposit of a bank guarantee.
- 2.3 The Court decided that claims should be lodged by 20 January 1995. By that date 527 claims had been presented in the limitation proceedings totalling Drs 3 071 million or €9 million (£6.2million) for clean-up costs and economic loss plus Drs 378 million or €1.1 million (£750 000) for 'moral damage'.
- 2.4 In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. Although the liquidator has submitted his report to the Court, it has not yet been made available to the Fund.
- 2.5 The shipowner and his insurer took legal action against the 1971 Fund in order to protect their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2.1 million), also took legal action against the 1971 Fund in order to prevent his claim from becoming time-barred. All other claims have become time-barred *vis-à-vis* the Fund.

3 *Kriti Sea*

(Greece, 9 August 1996)

- 3.1 The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus, Greece. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.
- 3.2 In December 1996, the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.5 million) by means of a bank guarantee.

- 3.3 Most claims have been settled, but some are the subject of legal proceedings in the Greek Supreme Court. The aggregate amount of the settled claims and the amount claimed in the Supreme Court is below the level at which the 1971 Fund would be called upon to make any payments in respect of compensation or indemnification. However, as the Fund is a defendant in the proceedings in the Supreme Court, the Director has instructed the Fund's lawyers to attend the hearings to protect the Fund's position.

4 *Evoikos*

(Singapore, 15 October 1997)

- 4.1 The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo was subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40-kilometre length of the Malaysian coast in the State of Selangor.
- 4.2 At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 4.3 In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 948 SDR (£7.2 million).
- 4.4 All known admissible claims for compensation in Malaysia, Singapore and Indonesia have been settled by the shipowner. The 1971 Fund is not aware of any outstanding claims.
- 4.5 The total compensation paid by the shipowner is below the level at which the 1971 Fund would make any payments in respect of compensation or indemnification.
- 4.6 The shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The Indonesian Court, at the request of the insurer and the Fund, discontinued the action in Indonesia. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer informed the Fund that it was not prepared to withdraw its actions against the Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against the shipowner, which might result in the Fund being liable to pay compensation or indemnification.

5 **Action to be taken by the Administrative Council**

The Administrative Council is invited to take note of the information contained in this document.
