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ANY OTHER BUSINESS

INCIDENT INVOLVING THE NORTH OF ENGLAND P&I CLUB

NEFTERUDOVOZ-57M

Note by the International Group of P&I Clubs

Summary:

The Russian river/sea-going tanker was involved in a collision in the White Sea, Russian Federation resulting in a spill of heavy fuel oil. The Russian Courts held that the 1992 Civil Liability Convention did not apply to the incident because it occurred in the inland waters of the Russian Federation and that compensation should therefore be calculated under the rules of the Russian Federation and not under the rules of international treaties. Claims for compensation were determined on the basis of theoretical formulae.

Action to be taken:

Information to be noted.

1 Introduction

- 1.1 This document by the International Group of P&I Clubs relates to an incident in the Russian Federation in September 2003. Although the scale of the incident was such that the 1992 Fund will not be required to pay compensation, in view of the importance placed by the 1992 Fund's Member States on the uniform application of the international compensation regime, the International Group would like to bring the 1992 Fund Executive Committee's attention to the circumstances of the incident and the position taken by the Russian courts as regards the applicability of the 1992 Civil Liability Convention and the scope of compensation for impairment of the environment.

2 The incident

- 2.1 On 1 September 2003 the Russian oil-ore carrier *Nefterudovoz-57M* (2 605 GT), laden with a cargo of heavy fuel oil, struck the Cyprus tanker *Zoja I* (18 625 GT) in the outer roads of Onega, White Sea (Russian Federation). At the time of the incident the *Nefterudovoz-57M* was manoeuvring alongside the *Zoja I* in order to undertake a ship-to-ship transfer of cargo.

- 2.2 The surveyor attending the incident on behalf of the shipowner initially estimated that 0.2 tonnes of cargo was spilled. However, the Russian authorities later calculated that 53.893 tonnes had been spilled, of which 8.893 tonnes was recovered by skimming.

3 Claims for compensation

- 3.1 A claim for Roubles 14 847 521 (£242 000) for pollution damage was submitted by the Arkhangelsk Specialised Maritime Inspectorate of the Ministry of Natural Resources of the Russian Federation. The claimed amount was calculated on the basis of the 'Methodika', a method developed in 1967 for quantifying environmental damages. The method uses a theoretical formula to determine the scale of damages based on the volume of oil spilled, the sensitivity of the area in which a spill occurs and the rate at which the oil is cleaned up.
- 3.2 The *Nefterudovoz-57M* was insured by the North of England P&I Club and carried a certificate issued by the Harbour Master of Astrakhan on behalf of the Government of the Russian Federation attesting that the ship was insured in accordance with the provisions of the 1992 Civil Liability Convention. The Russian Maritime Register of Shipping classed the vessel for river and sea navigation with certain restrictions as regards navigation at sea. The vessel has in recent years sailed in the North Sea and the Baltic Sea.
- 3.3 The claimants referred the claim to the Arkhangel Arbitration Court.
- 3.4 In the proceedings before the Arbitration Court the shipowner argued that claims for compensation in respect of the incident should be governed by the 1992 Civil Liability Convention, which excluded claims for impairment of the environment based on abstract quantification calculated in accordance with theoretical models.
- 3.5 The Arbitration Court dismissed the shipowner's argument that compensation for pollution damage should be governed by the 1992 Civil Liability Convention. The Court stated that the provisions of the 1992 Civil Liability Convention applied to vessels carrying oil and oil products which call at a foreign port and which are on the high seas or on inland waters of a foreign State. The Court further stated that the *Nefterudovoz-57M*, which was a river-sea vessel, was at the material time undertaking deliveries of oil products in internal waters of the Russian Federation under the regulations for service of the ships of the RSFSR River Fleet Ministry approved by Order of the RSFSR River Fleet Ministry No.30 of 30 March 2002. The Court determined that the calculation of the amount of the losses should therefore be carried out under the rules of the Russian Federation, but not under the rules of international law or the provisions of international treaties.
- 3.6 In a judgement in April 2004 the Arbitration Court found against the shipowner in the amount of Roubles 12 397 500 calculated in accordance with the 'Methodika'. The Court ordered that the compensation should be allocated to the revenue of the Municipal Authority of Gorod Onezhskiy.
- 3.7 The shipowner appealed against the decision by the Arbitration Court of the Arkhangel Region to the Appeal Court of Arkhangel and then to the Court of Cassation in St Petersburg, maintaining that the claim should be subject to the 1992 Civil Liability Convention. However, both these Courts upheld the ruling of the first instance Arbitration Court.
- 3.8 In January 2005 the Arctic Regional Border Department of the Federal Security Service filed a claim for Roubles 19 604 529 (£368 000) on behalf of fishery interests. This claim was also calculated on the basis of the 'Methodika'.

- 3.9 The Arctic Regional Border Department has taken legal action in the Arkhangel Arbitration Court against the shipowner.
- 3.10 The International Group has brought this incident to the attention of the Executive Committee for the following reasons:
- (i) The Arbitration Court stated that the provisions of the 1992 Civil Liability Convention applied to vessels carrying oil and oil products which call at a foreign port and which are on the high seas or on inland waters of a foreign State. However, Article II(a)(i) of the 1992 Civil Liability Convention states that the Convention applies to pollution damage in the territory, including the territorial sea of a Contracting State.
 - (ii) In the case of a similar incident, namely the *Victoriya* (Russian Federation, 30 August 2003) - a Russian tanker that suffered a fire and explosion at a terminal on the Volga river, 1 300 kilometres inland from the Caspian Sea and the Sea of Azov - the 1992 Fund Executive Committee decided at its October 2003 session that the 1992 Conventions applied, since the *Victoriya* was a sea-going vessel and the pollution damage had been caused in the territory of a Contracting State.
 - (iii) As the International Group is firmly convinced that claims for pollution damage arising from the *Nefterudovoz-57M* incident should be governed by the 1992 Civil Liability Convention, the claims calculated on the basis of the 'Methodika' should be inadmissible in accordance with the policy of the 1992 Fund, where claims will not be entertained for environmental damage based on an abstract quantification in accordance with theoretical models (cf 1992 Fund Claims Manual, November 2002 edition, page 30).

4 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.
