



INCIDENTS INVOLVING THE 1992 FUND

OTHER INCIDENTS

Note by the Director

Summary:

Dolly

In October 2006 the 1992 Fund paid the amount of €1 457 753 (£990 000) to the French Government in full settlement of all its losses arising out of the *Dolly* incident. As a result of the settlement, the French Government withdrew the legal action against the 1992 Fund.

N°7 Kwang Min

All claims for compensation arising out of this incident have been settled by the Fund for a total of £1.1 million, except for two. The two claimants have commenced legal action against the owners of the two vessels involved in the incident, the *N°7 Kwang Min* and the *N°1 Chil Yang*.

The owner of the *N°1 Chil Yang* has established a limitation fund in accordance with Korean law. In August 2007 the limitation court assessed the claims against the owner of the *N°1 Chil Yang*. The Fund is expected to recover 97.35% of the limitation fund, some Won 122 million (£64 000).

The owner of the *N°7 Kwang Min* has few assets. The legal costs of a recourse action against him are likely to exceed by far any sum that the 1992 Fund might be able to recover. The Director therefore recommends the Fund should not pursue recourse action against the owner of the *N°7 Kwang Min*.

Action to be taken:

To give the Director instructions in respect of the recourse action against the owner of the *N°7 Kwang Min*.

1 *Dolly*

The incident

- 1.1 The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank on 5 November 1999 in 20 metres depth in Robert Bay, Martinique.
- 1.2 There is a national park, a coral reef and mariculture near the grounding site and artisanal fishing is carried out in the area. There were fears that fishing and mariculture would be affected if bitumen were to escape.

- 1.3 The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship did not have any liability insurance. The owner is a company in St Lucia.
- 1.4 The shipowner was ordered by the authorities to remove the wreck but he did not comply with the order, probably due to lack of financial resources.

The definition of 'ship'

- 1.5 In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided to the 1992 Fund, including the original drawings and a sketch showing modifications that were subsequently made to the vessel. The 1992 Fund's experts expressed the opinion that although the *Dolly* had been originally designed as a general cargo vessel, it had subsequently been adapted for the carriage of oil in bulk as cargo, and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention. The Committee decided that the *Dolly* fell within that definition (cf Annual Report 2006 pages 80-82).

Measures to prevent pollution

- 1.6 Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by the cargo of bitumen. These companies submitted their proposals on the basis of diving inspections of the wreck carried out in October and November 2000. The French authorities provided the 1992 Fund with copies of the proposals.
- 1.7 Two of the companies proposed removing the bitumen tanks intact while leaving the wreck in its current position. Both companies estimated the cost of such an operation to be in the region of US\$1.5 million (£750 000)^{<1>}. The third company proposed righting the wreck and refloating it with its cargo on board, following which the bitumen would be removed and the wreck scuttled in deep water. The cost of this method was estimated at US\$950 000 (£470 000).
- 1.8 In July 2001 the Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen.
- 1.9 The 1992 Fund's experts examined the proposed methods and expressed the view that the third company's proposal was preferable on both technical and cost grounds. The French authorities indicated that they favoured refloating the wreck prior to removing the cargo, and then dismantling the wreck on shore, but that they would consider other options.
- 1.10 In July 2001 the Director informed the French Government of the Fund's experts' opinion on the various proposals. The Director also stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.
- 1.11 In September 2002 the French Government informed the 1992 Fund that in view of the anticipated costs of undertaking the operations, tenders were being sought through the Official Journal of the European Communities.

<1> In this document conversion of currencies has been made on the basis of exchange rate as at 30 August 2007 (US\$1 = £0.497) except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

- 1.12 In August 2004 the French authorities informed the Fund that a contract had been awarded to a consortium comprising a French diving company and the managers of a yacht marina in Martinique. The original intention had been to right the vessel on the seabed before removing the three cargo tanks containing the bitumen from the ship's hold, following which the tanks would be towed to a dry dock in Fort de France for the bitumen to be removed. The total cost of the operation had been estimated at around €1 million (£677 000)^{<2>}.
- 1.13 Operations commenced in October 2004. Attempts to right the vessel on the seabed were unsuccessful, and the contractor therefore decided to cut through the side and deck plating of the wreck in order to gain access to the three tanks containing the bitumen. As a result of heavy sea conditions and a number of unforeseen practical problems, removal of the tanks took longer than planned and proved more difficult than anticipated. By mid-December the contractors had removed the tanks from the hold with the aid of floatation bags and had laid them on the seabed near to the wreck where they were left until March 2005 when the weather would be more conducive to towing the tanks to the dry dock.
- 1.14 Operations were resumed in March 2005 as planned. However, as a result of further technical problems the towing of the tanks to shore and the removal of the bitumen were not completed until July 2005.

Legal action

- 1.15 In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally FFfr1.2 million or €232 000 (£157 000) in respect of the costs of removing the bunker oil from the *Dolly*. It was stated in the writ that further costs in excess of €1 million (£1.3 million) would be claimed in respect of the removal of the cargo.

Recent developments

- 1.16 In March 2006 the French Government submitted a claim for €1 388 361 (£940 000) for the costs of removing the bunker fuel and the bitumen cargo from the wreck. In June 2006 the claim was increased to €1 457 753 (£990 000) to take into account additional costs arising from the technical and meteorological problems.
- 1.17 The shipowner does not have financial resources to pay any compensation. As mentioned in paragraph 1.3, the ship did not have any liability insurance. For these reasons the Director decided that the 1992 Fund should compensate the French Government under Article 4.1(b) of the 1992 Fund Convention.
- 1.18 In October 2006 the 1992 Fund paid the amount of €1 457 753 (£990 000) to the French Government in full settlement of all its losses arising out of the *Dolly* incident. As a result of the settlement, the French Government withdrew the legal action against the 1992 Fund.

2 N^o7 Kwang Min

The incident

- 2.1 On 24 November 2005 the Korean tanker *N^o7 Kwang Min* (160 GT) collided with the Korean fishing vessel *N^o1 Chil Yang* (139 GT) in the port of Busan, Republic of Korea. A total of 37 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil onboard the *N^o7 Kwang Min* was transferred to a number of other vessels. The *N^o7 Kwang Min* was subsequently taken to a shipyard in Busan.

^{<2>} The conversion of the Euro has been made on the basis of the exchange rate as at 30 August 2007 (€1 = £0.677).

- 2.2 The 1992 Fund appointed a team of Korean surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.
- 2.3 As regards clean-up operations and impact of the spill, reference is made to the 1992 Fund Annual Report 2006, pages 118-120.

Applicability of the 1992 Fund Convention

- 2.4 In December the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the *N^o7 Kwang Min* was not insured for pollution liabilities and that the registered owner had insufficient financial assets to cover the claims for compensation for pollution damage arising from the incident.
- 2.5 At its February/March 2006 session, the Executive Committee endorsed the position taken by the Director as regards his authority to settle claims under Internal Regulation 7.4 and also authorised him to make final settlement of all further claims arising out of the incident (cf Annual Report 2006, page 119).

Claims for compensation

- 2.6 Twelve claims totalling Won 2.7 billion^{<4>} (£1.4 million) in respect of costs of clean up and preventive measures have been settled for a total of Won 1.9 billion (£1.1 million). One claim was rejected.
- 2.7 The owners of six live seafood restaurants located in the polluted area submitted claims for alleged mortalities of fish as a result of oil entering their aquaria via submerged seawater intakes, for loss of earnings as a result of cancellations of bookings and other unspecified damages. The claims, which totalled Won 163 million (£86 000), were settled at Won 3.1 million (£1 860).
- 2.8 Claims totalling Won 154 million (£81 000) by 81 women divers for loss of earnings due to interruption of their shellfish harvesting and sales activities were settled for Won 36 million (£20 000).
- 2.9 Further fishery claims totalling Won 93 million (£49 000) by ten boat owners were settled at Won 51 million (£28 000).
- 2.10 Claims by nine seaweed (sea mustard) culturists totalling Won 371 million (£196 000) for property damage and production disruption were assessed at Won 42 million (£22 000). One claim was rejected. Six of the claimants have settled their claims for a total of Won 33 million (£12 000). Two seaweed culturists who had initially agreed with the assessed amount, at a later stage refused to accept the proposed settlement and commenced legal actions against the owners of the two vessels involved in the incident.
- 2.11 No further claims are expected out of this incident.

Legal actions

- 2.12 The results of the investigation into the cause of the incident by the Busan Maritime Safety Tribunal concluded that the liability ratio between the owner of the *N^o7 Kwang Min* and the owner of the fishing vessel *N^o1 Chil Yang* was 40:60.

<3> The conversion of the Won has been made on the basis of the exchange rate as at 30 August 2007 (1 Won = £0.0005).

- 2.13 The owner of the *N^o7 Kwang Min* filed an appeal with the Korean Central Marine Safety Tribunal against the decision of the Busan Maritime Safety Tribunal on the liability ratio of the incident. The Korean Central Marine Safety Tribunal delivered its decision that the apportionment of the liabilities between the owner of *N^o7 Kwang Min* and the owner of the fishing vessel *N^o1 Chil Yang* was 35:65.
- 2.14 As indicated in paragraph 2.10 above, two seaweed culturists have commenced legal actions in the Busan District Court against the owners of the two vessels involved in the incident.
- 2.15 The Director has instructed the 1992 Fund's lawyers in the Republic of Korea to take steps for the Fund to intervene in the court proceedings in order to explore the possibility of recovering the sums paid in compensation for this incident. As a result of the lawyers' investigation the Fund has commenced recourse action against the owners of the *N^o1 Chil Yang* and *N^o7 Kwang Min*

Limitation proceedings by the owner of the N^o1 Chil Yang

- 2.16 In January 2007, the owner of the *N^o1 Chil Yang* made an application to the Busan District Court for the commencement of limitation proceedings in order to limit his liability to the applicable limitation amount under the Korean Commercial Code, ie SDR 83 000 or Won 125 638 796 (£66 300).
- 2.17 The Director has instructed the Fund's lawyers to take steps for the Fund to intervene as a claimant in the limitation proceedings in order to recover, to the extent possible, the sums paid in compensation for this incident. In April 2007, the claims of the 1992 Fund were registered with the Busan District Court (Limitation Court).
- 2.18 In August 2007, the Court delivered its decision in relation to the limitation proceedings. The assessment by the limitation court of the claims against the owner of the *N^o1 Chil Yang* is summarised in the following table:

Claimant	Claim Amount	Court Assessment
Seaweed culturist	Won 68 868 500	Won 4 591 959
Seaweed culturist	Won 73 521 110	Won 5 305 481
<i>N^o7 Kwang Min's</i> owner	Won 36 333 449	Won 26 183 887
The 1992 Fund	Won 1 327 101 137	Won 1 327 101 137

- 2.19 If none of the parties lodges an appeal and the Court assessment becomes final the limitation fund of Won 125 638 796 (£66 300) would be distributed between the claimants in proportion with the assessments made by the Court. In such a case, the 1992 Fund would be entitled to 97.35% of the *N^o1 Chil Yang* limitation fund, or Won 122 million (£64 000).

Recourse action against the owner of the N^o7 Kwang Min

- 2.20 The owner of the *N^o7 Kwang Min* has two assets, namely an apartment and the *N^o7 Kwang Min* tanker, both of which are mortgaged for substantial amounts. Since the mortgagee banks have priority over any other creditors, it is unlikely that the 1992 Fund could recover any sums in respect of these properties.
- 2.21 The owner of the *N^o7 Kwang Min* has, as a result of the collision, also a claim against the owner of the *N^o1 Chil Yang* that has been assessed by the limitation court at Won 26 183 887 (£13 800). Since the limitation fund would have to be distributed in proportion with the court assessments, the owner of the *N^o7 Kwang Min* would be entitled to 1.97% of the limitation fund. Subject to a possible appeal by other parties, the amount granted to the owner of the *N^o7 Kwang Min* would be some Won 2 400 000 (£1 200).

2.22 The Director is of the view that the legal costs of a possible recourse action against the owner of the *N^o7 Kwang Min* would exceed by far any sum that the 1992 Fund might be able to recover. The Director therefore recommends the Executive Committee to instruct him not to pursue recourse action against the owner of the *N^o7 Kwang Min*.

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;
 - (b) to give the Director instructions in respect of the recourse action against the owner of the *N^o7 Kwang Min* as it may deem appropriate (paragraph 2.21-2.23); and
 - (c) to give the Director such other instructions as regards as it may deem appropriate.
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