



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ASSEMBLY  
23rd session  
Agenda item 17

71FUND/A.23/14/5  
20 October 2000  
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## INCIDENTS INVOLVING THE 1971 FUND

### SEA EMPRESS

#### Note by the Director

<b>Summary:</b>	A number of claims in respect of which legal proceedings have been brought against the shipowner, the shipowner's insurer and the 1971 Fund have been settled or withdrawn. In accordance with the Executive Committee's decision, the 1971 Fund is preparing to take recourse action against the Milford Haven Port Authority.
<b>Action to be taken:</b>	Information to be noted.

### 1 Introduction

- 1.1 This document sets out the developments as regards claims for compensation arising from the *Sea Empress* incident, which occurred on 15 February 1996 in the entrance to Milford Haven in South Wales (United Kingdom). The document also contains information regarding the recourse action that the Executive Committee has decided should be taken against the Milford Haven Port Authority (MHPA).
- 1.2 With respect to the incident, the impact of the spill, the clean-up operations and the effects on fishery and tourism, reference is made to documents 71FUND/EXC.52/7, 71FUND/EXC.55/7, 71FUND/EXC.57/6, 71FUND/EXC.58/6, 71FUND/EXC.59/8, 71FUND/EXC.60/8, 71FUND/EXC.61/7, 71FUND/EXC.62/7 and 71FUND/EXC.63/5.

## **2 Claims situation**

### **2.1 General situation**

As at 16 October 2000, 1034 claimants had presented claims for compensation and interest thereon for a total of £49.3 million. Payments have been made to 798 claimants totalling £29.5 million of which £6.9 million has been paid by the Skuld Club and £22.6 million by the 1971 Fund.

### **2.2 Recent developments**

- 2.2.1 Since the Committee's 63rd session, the Skuld Club and the 1971 Fund have completed their assessment of the UK Government's claim for £11.4 million in respect of clean-up operations. The Club and the Fund have approved the claim for £9.7 million, and payments totalling £8.7 million plus interest have been made.
- 2.2.2 A claim presented by the Environment Agency for £464 000 for costs incurred in its involvement in the clean-up operations has been provisionally assessed at £240 000, pending further information on a number of queried items.
- 2.2.3 It is hoped that the claim by the Royal Society for the Prevention of Cruelty to Animals (RSPCA) in respect of the cleaning and rehabilitation of oiled birds will be settled by the Skuld Club and the 1971 Fund in the near future.
- 2.2.4 A claim for £1.3 million by the Milford Haven Standing Conference on Anti-Oil Pollution (MHSC) in respect of clean-up operations carried out in the Haven has been provisionally assessed at £505 000, pending further information on queried items.

## **3 Legal proceedings**

### **3.1 Legal actions against the 1971 Fund**

#### *General situation*

- 3.1.1 Fifty-nine writs were issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants prior to the expiry of the three-year time bar period, 51 of which have been served. Agreements on the admissible amounts have been reached in respect of 98 of the claims for which writs were originally issued. Proceedings have been discontinued or withdrawn in respect of fifteen claims for which writs were originally issued and which had been either rejected or assessed at nil by the Skuld Club and the 1971 Fund. Negotiations are ongoing in respect of a significant number of the remaining claims.
- 3.1.2 One claimant has been debarred from pursuing his claim in the limitation proceedings, since he failed to file the correct form by 29 June 2000 following a court order to do so.

#### *Writs by shipowner/Skuld Club*

- 3.1.3 Three writs have been served on the 1971 Fund by the shipowner/Skuld Club. One writ relates to limitation of liability and names as defendants the 1971 Fund, the Secretary of State for the Environment, Transport and the Regions and all persons claiming or entitled to compensation as a result of the *Sea Empress* incident. A second writ relates to indemnification of the shipowner and names the 1971 Fund as the only defendant. The third writ, also naming the 1971 Fund as the only defendant, relates to a subrogated claim in respect of compensation payments made by the Skuld Club.

*Writ issued in respect of 119 claimants*

- 3.1.4 One hundred and nineteen claimants, all of whom are represented by one firm of loss adjusters, have commenced legal action as co-plaintiffs by serving a single writ which names the shipowner, the Skuld Club and the 1971 Fund as defendants. Eighty-seven claims (totalling £590 000) relate only to fees for work carried out by the loss adjusters. Fifty-one of these claims, totalling £222 000, have been settled at a total of £37 670. However, the 1971 Fund has been unable to make the necessary payments because the claimants' legal representatives have refused to withdraw the claimants from the writ due to a dispute over who should pay their legal costs.
- 3.1.5 Thirty-two of the claimants named on the writ either did not accept the amounts of compensation originally offered by the Skuld Club and the 1971 Fund, or have failed to provide sufficient information in support of their claims. Nine of these claims have recently been settled. Two claims for fees in respect of these claims are being assessed and details of the claims for fees of the remaining seven are expected in the near future.
- 3.1.6 The remaining claimant on the writ, a shellfish marketing company in Cornwall, had its claim rejected by the Executive Committee at its 49th session on the ground that the claim did not fulfil the criterion of a reasonable degree of proximity (document FUND/EXC.49/12, paragraphs 3.8.9 and 3.8.10).

3.2 Estimate of the total amount of outstanding claims

The table below gives a summary of the situation in respect of outstanding claims, which has been estimated using the highest figure submitted in the claims documentation in respect of each claim. As can be seen from the table, the total amount of outstanding claims is approximately £12 million. As regards the claims that have been assessed and not settled, at least £4.5 million relates to items considered by the Skuld Club and the 1971 Fund to be either inadmissible or unsubstantiated.

Category	Being assessed or awaiting further information ( <i>claimed amounts less any paid amounts</i> )	Assessed but not settled/paid (includes rejected claims)
Clean-up	£1 513 000	£3 000 000
Fishing	£755 000	£3 300 000
Tourism	£20 500	£550 000
General	£1 300 000	£1 050 000
Property	£157 000	£1 500
Fees	£100,000	£368 000
<b>SUBTOTAL</b>	<b>£3 845 500</b>	<b>£8 269 500</b>
<b>TOTAL</b>		<b>£12 115 000</b>

#### **4 Limitation proceedings**

- 4.1.1 In April 1999 the Admiralty Court granted the shipowner and the Skuld Club a decree limiting their liability under the relevant provisions of United Kingdom law to 8 825 686 SDR (£7.5 million). The decree required all claims to be filed by 18 November 1999. The majority of claimants who have served proceedings to protect their claim against time bar have also filed claims in the limitation action.
- 4.1.2 On 22 June 2000 a Case Management Conference (CMC) relating to the limitation proceedings was held at the Admiralty Court. The CMC was attended by representatives of most of the claimants involved in the limitation proceedings. The purpose of the CMC was to assist the Court Registrar in the efficient management of the proceedings.

- 4.1.3 Prior to the CMC the parties had agreed that a Case Memorandum and List of Issues should be prepared in relation to each claim which, since no formal pleadings were to be exchanged, should be sufficiently detailed to identify all material issues of fact and law.
- 4.1.4 The Registrar ordered that the texts of the Case Memoranda and Lists of Issues should be agreed by the parties by 22 September 2000. That date was subsequently postponed to mid-October 2000. A second CMC will be heard before the Registrar in the early part of 2001 to consider the future management of the case.
- 4.1.5 The 1971 Fund has made an application to the court for a temporary stay of the proceedings against the Fund until all the claims against the shipowner and the Skuld Club in the limitation proceedings have been determined. Those claimants who have served proceedings on the Skuld Club and the 1971 Fund were informed of the 1971 Fund's intention to apply to stay proceedings. The 1971 Fund was not informed of any opposition to the proposed application. The temporary stay was granted on 22 June 2000. In addition the court made a ruling that the 1971 Fund, as well as those claimants whose claims against the 1971 Fund had been stayed, should be bound by any findings of fact made by the Admiralty Court in any judgment given in respect of claims filed pursuant to the Decree of Limitation.

## **5 Recourse action**

- 5.1 At its 62nd session the Executive Committee considered whether the 1971 Fund should take recourse action against various third parties to recover the amount paid by the Fund in compensation as a result of the *Sea Empress* incident (cf document 71FUND/EXC.62/7/1).
- 5.2 At that session the Committee decided that, due to the channelling provisions of the Merchant Shipping Act 1995 implementing the 1969 Civil Liability Convention, which preclude action for compensation against salvors, and the position of the pilot and his employer under the law of England and Wales, there would be no point in taking recourse action against those parties. The Committee also took the view that there was no evidence of negligence on the part of the Marine Pollution Control Unit of the DETR or the Coastguard Agency which would justify recourse action against them (document 71FUND/EXC.62/14, paragraph 3.6.12).
- 5.3 It was noted that the legal advice given to the 1971 Fund indicated that the basis of a recourse action against the MHPA would be that, as a harbour authority and a pilotage authority, the MHPA was in breach of both common law and statutory duties (under the Milford Haven Conservancy Act 1983 and the Pilotage Act 1987). It was also noted that, in the view of the 1971 Fund's legal advisers, there were good prospects of establishing that the MHPA was in negligent breach of duty in relation to safe navigation within the Haven and its approaches and that the necessary causative link between the breaches and the incident existed (document 71FUND/EXC.62/14, paragraph 3.6.13).
- 5.4 The Committee was aware that there was a risk element inherent in any litigation and that a recourse action against the MHPA would give rise to complex legal issues. It was noted that it was likely that certain evidence concerning the running of the port would not become available until after the proceedings had begun, which added to the difficulty of predicting the outcome of the case.
- 5.5 A number of delegations took the view that, since there appeared to be a reasonable prospect of recovering at least part of the amounts paid by the 1971 Fund to victims, they supported the Director's view that a recourse action should be pursued against the MHPA.
- 5.6 The Executive Committee decided to instruct the Director to take recourse action on behalf of the 1971 Fund against the MHPA. The Director was also instructed to keep the Committee informed

of any developments so as to enable it to reassess the 1971 Fund's position if required (document 71FUND/EXC.62/14, paragraph 3.6.23).

- 5.7 The Director, together with the 1971 Fund's legal advisers, is currently finalising the claim document in the recourse action, to be issued in the Admiralty Court in the near future.

**6 Action to be taken by the Assembly**

The Assembly 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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