



INCIDENTS INVOLVING THE 1971 FUND

SEA PRINCE

Note by the Director

Summary:

Most claims arising out of this incident have been settled and paid in full but some fishery claims remain pending in court. In April 2001 agreement was reached between the 1971 Fund and the shipowner's insurer on the appropriate exchange rate and the appropriate currency to be used to determine the limitation amount applicable to the *Sea Prince* and therefore the amount due to the insurer in respect of compensation overpayments and indemnification. The shipowner's outstanding claims for the costs of environmental studies and additional clean-up undertaken in light of the results of those studies were settled in March 2001. An application has been made to the court for the discontinuance of the limitation proceedings.

Action to be taken:

To take note of the information contained in this document.

1 Introduction

This document deals with developments in respect of the *Sea Prince* incident (Republic of Korea, 23 July 1995) that have taken place since the 4th session of the Administrative Council held in March 2001.

2 Claims for compensation

- 2.1 All claims relating to clean-up operations in the Republic of Korea have been settled for a total of Won 20 534 million (£11.7 million). These claims were paid in full by the shipowner and the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), who presented subrogated claims to the 1971 Fund.
- 2.2 In August 1996 the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. At the rate of exchange applicable at that time, this payment

represented less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

- 2.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total of ¥360 000 (£2 160). This claim was accepted in full by the 1971 Fund.
- 2.4 In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£603 000) and the other for costs totalling Won 135 million (£71 000) associated with additional clean-up undertaken by the shipowner in early 1998. The studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents.
- 2.5 On the basis of the information available at the time the Director took the view that the post-spill environmental studies appeared to duplicate the work of sampling and analysing seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. The Director therefore rejected the claim for the cost of these studies.
- 2.6 On the basis of surveys carried out by the 1971 Fund's experts prior to and during the period of the additional clean-up, these experts took the view that the additional clean-up operations were not technically justified. Although buried oil was found at most of the locations and subsequently subjected to further cleaning, the quantities were small, the oil was hard to find and the contamination was sporadic. Not all the oil samples collected matched the oils spilled from the *Sea Prince* and the *Honam Sapphire*. The experts concluded that the remaining oil did not pose any threat to fisheries and tourism nor did it represent an aesthetic problem. Furthermore, because of the difficulty of finding and getting access to the remaining oil, they considered that the clean-up would involve harsh, intrusive and seriously disruptive methods likely to cause more damage than the oil itself. In the light of the experts' opinion, the Director informed the shipowner that the 1971 Fund considered that the cost incurred for the additional clean-up did not qualify for compensation.
- 2.7 Most claims in the tourism sector have been settled for Won 538 million (£306 000) and paid in full.
- 2.8 Most of the claims in the fisheries sector have also been settled and paid in full in the total amount of Won 17 000 million (£9.4 million).
- 2.9 However, a total of 194 claims totalling Won 5 471 million (£3.0 million) remain the subject of legal actions against the 1971 Fund. The majority of these claims (183) had been rejected by the 1971 Fund, and the Court in charge of the limitation proceedings also rejected these claims. The Court also agreed with the Fund's assessment of the other 11 claims at a total of Won 95.5 million (£52 000).
- 2.10 The UK Club presented a claim on the basis of subrogation for US\$8.3 million (£5.3 million) relating to the cost of preventive measures associated with salvage operations. The 1971 Fund approved this claim for a total of US\$6.6 million (£4.2 million).
- 2.11 The UK Club also claimed on the basis of subrogation for reimbursements made to the shipowner for payments made by him mainly to Korean clean-up contractors for US\$22.6 million (£9.9 million), corresponding to Won 17 389 million plus ¥3.7 million.
- 2.12 The shipowner and the UK Club claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£5.0 million).

3 Recent developments

3.1 Determination of the limitation amount applicable to the *Sea Prince*

3.1.1 At the 1st session of the Administrative Council, acting on behalf of the 5th extraordinary session of the Assembly, dealing with items on the agenda of the 63rd session of the Executive Committee, it was reported that the shipowner had requested payment by the 1971 Fund in respect of clean-up costs that had not been reimbursed by the UK Club. The Administrative Council noted that the 1971 Fund could not make any payments in this regard before the limitation amount in Won applicable to the *Sea Prince* had been determined.

3.1.2 In view of the considerable time that would elapse before the limitation amount would be determined by the Court, as an exception the Administrative Council authorised the Director to agree with the shipowner/insurer on the exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince* and to determine the amount of indemnification payable by the Fund under Article 5.1 of the 1971 Fund Convention (document 71FUND/AC.1/EXC.63/11, paragraph 3.3.5).

3.1.3 In May 2000 the 1971 Fund proposed to the shipowner/UK Club that the limitation and indemnification amounts applicable to the *Sea Prince* should be calculated on the basis of the midpoint of the SDR/Won exchange rate on 1 March 1996 (which was representative of rates during the period in which most of the claims were paid by the shipowner/UK Club) and the SDR/Won exchange rate on 9 May 2000. This gave a limitation amount of Won 18 308 275 906 (£10.2 million) and an indemnification amount of Won 7 410 928 540 (£4.1 million). The reason for proposing a midpoint exchange rate was to reach an equitable settlement taking into account the considerable fluctuations in exchange rates that occurred between 1996 and 2000. The shipowner/UK Club accepted the proposal in April 2001.

3.2 Reimbursement of amounts paid by the shipowner and the UK Club

3.2.1 In view of the fact that the UK Club had reimbursed the shipowner for an amount in excess of the limitation amount applicable to the *Sea Prince*, the 1971 Fund agreed to pay the balance of the shipowner's claim in respect of clean-up costs. This claim was settled at Won 3 281 million (£1.9 million) plus interest of Won 926 million (£528 000).

3.2.2 On the basis of the agreed limitation amount applicable to the *Sea Prince*, in May 2001 the 1971 Fund reimbursed the UK Club Won 4 990 million (£2.8 million) plus interest of Won 1 497 million (£800 000) in respect of clean-up costs and preventive measures associated with salvage, and Won 7 411 million (£4.1 million) in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.

3.3 Claims by the shipowner for the costs of environmental studies and additional clean-up measures

3.3.1 During meetings between the shipowner and the 1971 Fund in March 2001, the shipowner provided further documentation regarding the claim in respect of the costs of environmental studies referred to in paragraph 2.4 above.

3.3.2 The documentation indicated that some of the studies, which were undertaken by the Seoul National University and the Korea Oceanographic Research and Development Institute, were aimed at providing baseline data for the restoration of the environment and included shoreline surveys to locate buried oil in beach sediments, monitoring subsequent clean-up operations and investigations into the medium and long-term impact of the spill on inshore fisheries and mariculture. The shoreline surveys identified a number of locations where significant deposits of buried oil remained, and as a consequence, the decision was taken by the authorities to order further clean-up to remove the oil. The studies on the impact of the spill on fisheries and

aquaculture, which were carried out on a number of different species of fish, shellfish and seaweeds, indicated that the spill had not resulted in any long-term damage to these resources.

- 3.3.3 Other studies covered by the claim included the laboratory toxicity testing of crude oil of the type spilled by the *Sea Prince* to different species of fish and shellfish and a review of clean-up techniques used in different countries.
- 3.3.4 In light of this additional information, and notwithstanding the fact that the Court in charge of the limitation proceedings had rejected the claim in respect of environmental studies, the Director considered that the studies referred to in paragraph 3.3.2 related to damage falling within the definition of *pollution damage* as laid down in the Conventions as interpreted by the 1971 Fund governing bodies and did not duplicate the work of sampling and analysing seawater, sediments and marine products undertaken by the experts appointed by the UK Club and the 1971 Fund to assist with the assessment of claims for alleged damage to fisheries. The Director was therefore of the view that costs associated with these studies funded by the shipowner were admissible in principle.
- 3.3.5 On the other hand the Director considered that the studies referred to in paragraph 3.3.3 did not relate to pollution damage and duplicated work already undertaken and published in scientific literature. He therefore took the view that the costs of these studies were not admissible.
- 3.3.6 As regards the additional clean-up undertaken to remove the buried oil from a number of shorelines referred to in paragraph 2.6 above, the experts from ITOPF considered that on the basis of earlier shoreline surveys further clean-up was not justified. However, the Fund's Korean expert who monitored the operations took the contrary view and reported that the quantity of oil removed as a result of this clean-up was considerably greater than had been expected on the basis of the initial surveys. In view of the environmental sensitivity of the polluted area, its importance as a major centre for inshore fisheries and mariculture and the quantities of buried oil subsequently found in the area, the Director reconsidered his position and expressed the view that the claim for the costs of the additional clean-up should be considered admissible in principle.
- 3.3.7 At its 4th session, held in March 2001, the Administrative Council decided that, notwithstanding the fact that the claims relating to the post spill environmental studies and additional clean-up referred to in paragraphs 3.3.3 and 3.3.4 had been rejected by the Court in charge of the limitation proceedings, to authorise the Director to settle these claims. The Committee also endorsed the Director's view that the costs of the studies referred to in paragraph 3.3.5 were not admissible (document 71FUND/AC.4/A/ES.7/6, paragraph 3.4.15).
- 3.3.8 In April 2001 the claim in respect of environmental studies was settled for Won 580 million (£311 000) plus interest of Won 144 million (£82 000) and the claim in respect of additional clean-up for Won 135 million (£77 000) plus interest of Won 25 million (£14 000).

3.4 Claims by the National Park and Yosu FCU

In May 2001 the 1971 Fund settled a claim by the National Park Management Public Corporation for Won 5.1 million (£2 800) plus interest of Won 1.5 million (£830) in respect of clean-up costs and a claim by the Yosu FCU for Won 18.9 million (£152 000) plus interest of Won 5.6 million (£3 100) for costs associated with surveys of polluted areas.

3.5 Limitation proceedings

- 3.5.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR but the Court has not yet constituted the limitation fund and the limitation amount in Won has therefore not been fixed.
- 3.5.2 As a consequence of having agreed the limitation amount applicable to the *Sea Prince* and having settled all outstanding disputed claims in the limitation proceedings, the shipowner/UK Club and

the 1971 Fund have requested the Court to render the limitation proceedings void *ab initio*, which is possible under Korean law if all parties agree.

- 3.5.3 The claims by 194 claimants referred to in paragraph 2.9 were brought in the limitation proceedings. The claimants did not appeal against the decision of the Court in charge of those proceedings on the assessments of the claims, but instead filed a separate action against the 1971 Fund. These claimants agreed to join the 1971 Fund and the shipowner/UK Club in making an application before the Limitation Court for the discontinuance of the limitation proceedings, provided that the 1971 Fund made payments of the amounts assessed by that Court, and gave an undertaking that the claimants' rights to pursue their claims against the Fund would not be prejudiced and that the Fund would pay any sums awarded in a final judgement. The Court is expected to give its final judgement at the end of October 2001.
- 3.5.4 In May 2001 the 1971 Fund paid Won 95.5 million (£53 000) in respect of the 11 claims referred to in paragraph 2.9 in accordance with the Limitation Court's assessments.
- 3.5.5 The application for the discontinuance of the limitation proceedings was filed on 21 June 2001, and the Court is expected to render its decision in early October 2001.

4 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 other instructions as the Assembly may deem appropriate in respect of this incident.
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