



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ASSEMBLY  
24th session  
Agenda item 19

71FUND/A.24/16/4  
28 September 2001  
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## INCIDENTS INVOLVING THE 1971 FUND

### SEA EMPRESS

#### Note by the Director

**Summary:**

Compensation totalling £33 million has been paid to 800 claimants. A number of claims in respect of which legal proceedings had been brought against the shipowner, the shipowner's insurer and the 1971 Fund have been settled or withdrawn. Claims totalling £7.2 million are currently in court. In accordance with the Executive Committee's decision, the 1971 Fund is preparing to take recourse action against the Milford Haven Port Authority.

**Action to be taken:**

Information to be noted.

## 1 Introduction

- 1.1 This document sets out the developments since the Administrative Council's 3rd session, held in October 2000, 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).
- 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 21 September 2001, 1034 claimants had presented claims for compensation and interest thereon for a total of £49.3 million. Payments have been made to 800 claimants totalling

£33.1 million, of which £6.9 million has been paid by the shipowner's insurer, Assuranceforeningen Skuld (Skuld Club), and £26.2 million by the 1971 Fund.

2.2 Recent developments

- 2.2.1 Since the Administrative Council's 3rd session, the claim by Carmarthenshire County Council for £1.3 million in respect of clean-up operations was settled for £1.26 million plus interest.
- 2.2.2 A claim for £11.4 million by the Marine Pollution Control Unit (MPCU) of the United Kingdom Department of Transport for costs relating to clean-up operations was settled for £9.7 million in early 2001.
- 2.2.3 A claim presented by Texaco Pembroke Refinery for £920 000 for costs incurred in its involvement in the clean-up operations and for losses in the form of demurrage has been provisionally assessed at £495 000, pending further information on a number of items. The demurrage element of the claim (£77 000) was rejected by the Executive Committee (cf document 71FUND/EXC.60/17, paragraph 3.7.7).
- 2.2.4 A claim presented by Elf UK Oil for £73 000 in respect of clean-up for costs incurred in its involvement in the clean-up operations is still under assessment. The company's claims totalling £384 000 in respect of demurrage, sub-chartering of vessels, delays to deliveries of crude and reduction in refinery throughput were rejected by the Executive Committee (cf document 71FUND/EXC.60/17, paragraph 3.7.8).
- 2.2.5 The claims by Texaco and Elf rejected by the 1971 Fund remain the subject of legal actions.
- 2.2.6 A claim submitted by the Milford Haven Standing Conference on Anti-Oil Pollution (the Standing Conference) for £1 328 000 has been assessed by the Funds experts at £670 000. The Milford Haven Port Authority (MHPA) has accepted this assessment on behalf of the Standing Conference. The 1971 Fund is discussing with the MHPA the appropriate time period for the calculation of interest.
- 2.2.7 A claim submitted by the United Kingdom Environment Agency for £464 000 was settled for £276 000.
- 2.2.8 Eight claims presented by fishermen for £660 000 for loss of income were settled for £325 000. Two further fishing claims are under assessment
- 2.2.9 Thirteen claims for tourism and property damage for £664 000 have been settled for £336 000. A claim submitted by the Royal Society for the Prevention of Cruelty to Animals for £240 000 has been settled at £164 000.

3 Legal proceedings

3.1 Legal actions against the 1971 Fund

*General situation*

- 3.1.1 Legal proceedings have been commenced in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period, ie on or shortly after 15 February 1999.
- 3.1.2 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 were served. Agreements on the admissible amounts have been reached in respect of 120 of the claims for which writs were originally issued. Proceedings have either been discontinued or withdrawn or

not pursued in respect of 25 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.

- 3.1.3 One claimant has been barred from pursuing his claim in the limitation proceedings, since he failed to file the correct form by 29 June 2000 despite a court order to do so.
- 3.1.4 Forty-eight claims are being pursued in the limitation proceedings, of which 30 relate to fees only (see paragraphs 3.1.6 and 3.1.7 below).

*Writs by shipowner/Skuld Club*

- 3.1.5 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 under Article 5.1 of the 1971 Fund Convention 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*

- 3.1.6 One hundred and nineteen claimants, all represented by one firm of loss adjusters, 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) related only to fees for work carried out by the loss adjusters. Seventy-four of these claims, totalling £388 000, have been settled at a total of £72 500. Payments totalling £56 000 have been made in respect of forty-seven of these agreed claims. However, the 1971 Fund had been unable to make the necessary payments in respect of the remaining agreed claims because of a dispute over who should pay the claimants' legal costs. This dispute has now been resolved, and the outstanding payments will be made in the near future.
- 3.1.7 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 had failed to provide sufficient information in support of their claims. Seventeen of these claims have been settled. Two claims for fees in respect of these claims are being assessed and details of the claims for fees of the remaining fifteen are expected in the near future. Settlement offers have been made in respect of two further claims in the fisheries category. Six claims of various types have been withdrawn by the claimants. Five fisheries claims and one tourism claim on this writ are disputed.
- 3.1.8 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). This claim has now been withdrawn from the proceedings.

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 £7.2 million. Of the majority of the claims that have been assessed and not settled, £4.3 million are for 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	£550 000	£350 000
Fishing	£0	£3 600 000
Tourism	£0	£250 000
General	£500 000	£0
Property	£0	£5 000
Fees	£100 000	£60 000
SUBTOTAL	£2 950 000	£4 265 000
TOTAL		£7 215 000

#### **4 Limitation proceedings**

- 4.1 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.
- 4.2 The 1971 Fund appealed 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. The temporary stay was granted on 22 June 2000. In addition the court ruled 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 judgement given in respect of claims filed in the limitation proceedings.
- 4.3 On 22 June 2000 a Case Management Conference (CMC) relating to the limitation proceedings took place 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 is to assist the Court Registrar in the efficient management of the proceedings.
- 4.4 Prior to the CMC in June 2000 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 in the majority of cases, should be sufficiently detailed to identify all material issues of fact and law. At the CMC 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. The parties agreed that the claims be divided into the following five categories: clean-up, fishing, tourism, economic loss and professional fees.
- 4.5 A second CMC took place before the Admiralty Registrar on 21 March 2001 to consider the future management of the claims in the limitation proceedings. In relation to each category, directions were made by the Registrar regarding, *inter alia*, disclosure of documents and the timing for exchange of witness statements and expert reports. Following the CMC, trial dates were fixed for each category with a view that each of the claims in the category will be heard consecutively at the same trial.

#### **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 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 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).
- 5.6 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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