



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

EXECUTIVE COMMITTEE
12th session
Agenda item 3

92FUND/EXC.12/3
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ASSEMBLY
7th extraordinary session
Agenda item 3

71FUND/A/ES.7/3

INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

Note by the Director

Summary:

As a result of the increase in the level of payments from 70% to 80% the 1992 Fund made payments totalling ¥1 961 million in February 2001. The IOPC Funds submitted a counter claim against the shipowner and his insurer in respect of the Funds' payments to three prefectures in order to speed up the court proceedings.

Action to be taken:

Information to be noted.

1 Claims for compensation

- 1.1 As at 10 March 2001, 458 claims totalling ¥35 128 million (£209 million)^{<1>} had been received.
- 1.2 The Director informed the governing bodies of the IOPC Funds at their October 2000 sessions that he estimated the total exposure of the Funds at some ¥28 468 million (£170 million). The governing bodies decided to authorise the Director to increase the level of payments to 80% of the amount of the damage actually suffered by the individual claimants when the total amount of the settled and pending claims fell below ¥27 800 million (documents 92FUND/EXC.9/12, paragraph 3.3.8 and 71FUND/AC.2/A.23/22, paragraph 17.8.8).
- 1.3 As a result of developments since the October 2000 sessions of the governing bodies the Director estimated that as at 22 January 2001 the total exposure of the Funds was some ¥27 780 million. In the light of these developments the Director decided to increase the level of payments to 80% of the amount of the damage actually suffered by the individual claimants. The Director's decision was reported to the governing bodies at their sessions in January 2001 (documents 92 FUND/EXC.11/6, paragraph 4.1.5 and 71 FUND/AC.3/ES.6/7, paragraph 3.3.5).

<1> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at 15 February 2001, ie £1=¥167.811, except in respect of amounts paid where conversion has been made at the rate of the date of payment.

- 1.4 As a result of the Director's decision to increase the level of payments, the 1992 Fund made additional payments totalling ¥1 961 million (£12 million) in February 2001. Further additional payments of ¥18 million (£109 000) will be made in the near future.
- 1.5 The total payments made to claimants amounted to ¥16 313 million (£87 million) as at 10 March 2001, including the payments made by the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), totalling ¥65 889 134 (£400 000) plus US\$4.6 million (£3 million).
- 1.6 It is expected that claims submitted by three electricity power plants totalling ¥705 934 341 (£4.2 million) will be settled in the very near future.
- 1.7 The claims situation as at 10 March 2001 is shown in the tables set out below.

| Settled claims | | |
|---|------------------------------|------------------------------|
| Category of claims | Claimed amount (¥1 000) | Settled amount (¥1 000) |
| Japan Maritime Disaster Prevention Centre (JMDPC) | 12 016 344 | 10 299 544 |
| Prefectures and municipalities | 4 592 938 | 3 666 910 |
| Shipowner's contractors | 259 088 | 250 170 |
| Fishery | 5 013 257 | 1 769 172 |
| Tourism | 2 840 858 | 1 344 157 |
| Others | 15 139 | 11 428 |
| Total | 24 737 624 (£144 million) | 17 341 381 (£101 million) |

| Claims pending in court | | | |
|--------------------------------|--------------------------|-----------------------------|----------------------------------|
| Category of claims | Number of pending claims | Claimed amount (¥1 000) | Provisional payments (¥1 000) |
| JMDPC (pending parts) | 5 ^{<1>} | 3 208 823 | 0 |
| Government agencies | 11 | 1 519 466 | 0 |
| Prefectures and municipalities | 4 | 2 549 628 | 687 568 |
| Tourism | 15 ^{<2>} | 41 330 | 0 |
| Shipowner/UK Club | 1 | 381 052 | 0 |
| Others | 7 | 2 733 252 | 1 389 400 |
| Total | 43 | 10 433 551 (£62 million) | 2 076 968 (£12 million) |

Notes: <1> Includes three claims relating to causeway construction and removal.

<2> These 15 claims were assessed as nil by the IOPC Funds.

2 Submission of a counter claim by the IOPC Funds against the shipowner and the UK Club

- 2.1 As reported in document 92FUND/EXC.7/2, the IOPC Funds have brought legal actions in the Fukui District Court against the shipowner, Prisco Traffic Ltd, its parent company Primorsk Shipping Corporation, the UK Club and the Russian Maritime Register of Shipping.
- 2.2 The shipowner and the UK Club took legal action in the Fukui District Court against the 1971 and 1992 Funds requesting reimbursement of the amounts they had paid to various contractors.

- 2.3 The shipowner and the UK Club have from the outset been represented by the same lawyer in Japan who signed all settlement agreements with claimants on behalf of both the shipowner and the UK Club. He is also representing both the shipowner and the UK Club in their actions against the 1971 and 1992 Funds.
- 2.4 The legal actions taken by the IOPC Funds against the UK Club have been served on the Club at its Tokyo office.
- 2.5 The lawyer referred to in paragraph 2.3 above has informed the Fukui District Court that he is not authorised to receive service of writs on behalf of the shipowner. The Director has been informed that service of the shipowner in Nakhodka in the Russian Federation may take some 18 months.
- 2.6 Similar problems relating to the service of writs will arise in respect of Primorsk Shipping Corporation in Nakhodka and the Russian Maritime Register of Shipping in St Petersburg.
- 2.7 The Fukui District Court has fixed the first hearing to be held on 19 September 2001.
- 2.8 The shipowner and the UK Club brought legal actions in the same Court against the 1971 and 1992 Funds for ¥537 million (£3.2 million) in respect of their subrogated rights relating to the payments made by them.
- 2.9 The powers of attorney issued by the shipowner and the UK Club in respect of the action against the IOPC Funds include authority for their Japanese lawyer to receive service of counter claims.
- 2.10 The IOPC Funds therefore submitted a counter claim in the Fukui District Court against the shipowner and the UK Club in respect of the Funds' payments to three prefectures totalling ¥2 913 180 265 (£17 million). The counter claim was served on the shipowner's and UK Club's lawyer on 5 February 2001. The purpose of the Funds' bringing the counter claim is to speed up the proceedings against the shipowner and the UK Club.
- 2.11 The actions against the Primorsk Shipping Corporation and the Russian Maritime Register of Shipping are not affected by the counter claim, nor are the parts of the actions against the shipowner and the UK Club not covered by the counter claim.
- 2.12 The IOPC Funds also submitted defence pleadings against the actions taken by the shipowner and the UK Club against the Funds. The Funds have argued that these actions should be rejected on the grounds that the shipowner should not be entitled to limit his liability as the incident resulted from his personal fault or privity and that in any event the shipowner had not commenced limitation proceedings.

3 Action to be taken by the governing bodies

The governing bodies are 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 they may deem appropriate.
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