



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE -
10th session
Agenda item 3

FUND/EXC.10/3/Add.1
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INFORMATION ON AND APPROVAL OF
SETTLEMENT OF CLAIMS

Note by the Director

1 After the issuance of document FUND/EXC.10/3 certain developments have taken place with respect to incidents that have to be reported to the Executive Committee.

- (a) With respect to the HOSEI MARU incident, all payments have now been made, the recovery from the other colliding ship has been obtained and the respective shares of liability between the IOPC Fund and the P & I Club have been calculated.
- (b) With respect to the ONDINA incident, agreement has been reached with all claimants with respect to nearly all of the items claimed.
- (c) Two new incidents in respect of which claims may be made against the IOPC Fund have occurred, ie the CASTILLO DE BELLVER and the EIKO MARU NO 1 cases.

2 The Executive Committee is invited to take note of the detailed information on these four incidents contained in the Annex.

ANNEX

(The conversion of figures in national currencies into sterling is, as in document FUND/EXC.10/3, as at 7 July 1983)

1 HOSEI MARU (See no 3 of Annex to FUND/EXC.10/3)
(Japan, 21 August 1980)

1.1 The IOPC Fund has now been advised that the limitation proceedings have been finalised. Surveyors' and legal costs have been paid. Recourse action against the KINREI MARU, the other ship involved in the collision, has been partly successful. On the basis that each ship was equally to blame for the collision, it was agreed that an amount of ¥18 221 905 (about £50 000) had to be paid to the "pollution interests"; this amount has to be shared between the P & I Club and the IOPC Fund in proportion to the respective amounts of compensation paid.

1.2 The final distribution of compensation and costs between the IOPC Fund and the P & I Club is as follows:

	Total	JPIA	IOPC Fund	
	Yen	Yen	Yen	£
Third party claims & owner's clean-up costs	249 089 648 (100%)	35 765 920 (14.359%)	213 323 728 (85.641%)	(579 684)
Recovery from KINREI MARU	- 18 221 905	- 2 616 483	- 15 605 422	(42 406)
MAPSS survey fees	5 751 000	825 786	4 925 214	(13 384)
Lawyers' fees	7 284 370	1 542 159	5 742 211	(15 604)
Indemnification to shipowner	-	- 8 941 480	8 941 480	(24 297)
Total	243 903 113	26 575 902	217 327 211	(590 563)
Lawyers' fees paid by IOPC Fund to investigate the possibility of breaking the HOSEI MARU's limitation of liability			455 800	(1 239)
TOTAL			217 783 011	(591 802)

2 ONDINA (See no 7 of Annex to FUND/EXC.10/3)
(Germany, Federal Republic of, 3 March 1982)

2.1 Reports on the ONDINA incident were given to the Executive Committee at its seventh and ninth sessions. Reference is made to documents FUND/EXC.7/2 and FUND/EXC.9/2. It has now been possible to agree with the claimants on most of the items claimed as pollution damage. Only the question of whether interest is payable on the amount claimed by the UK P & I Club remains open (see paragraph 2.4.3.2 below). The cause of the incident, the clean-up operations and the claims for pollution damage made, are summarised as follows.

2.2 Cause of Incident and Extent of Pollution Damage

2.2.1 As reported in the Annex of document FUND/EXC.7/2, the tanker ONDINA (31 030 GRT), flying the flag of the Netherlands, failed to prevent the escape of oil into the water while discharging her cargo at storage tanks in the port of Hamburg, Federal Republic of Germany, at midnight on 3 March 1982. About 200-300 tonnes of the ship's cargo of Venezuelan Tia Juana Pesado crude got into the harbour as a result of a defect in one of the ship's valves and a mismanipulation of another. Because the two valves were not properly closed, the cargo escaped through ballast water pipes into the water. The escape of cargo into the water was not noticed at first because the pipes were below the water surface and, in addition to it being dark, there was very bad weather at the time. The responsible first officer noted the escape only after some time, when he noticed an oily smell. He immediately stopped the pumping, closed the two valves properly and prevented further oil from escaping into the harbour. The amount of oil which had escaped into the water was at first estimated at only 180 litres, later at two tonnes, but eventually it appeared that the quantity was at least 200 tonnes and probably even considerably more. A few days after the incident the responsible officer was fined DM7 000 (about £1 750).

2.2.2 A strong south-westerly gale at the time of the incident caused the oil to spread quickly over the harbour area. A high tide about 1.5 metres above normal caused the oil to spread high on the stone embankments. The wind, combined with rain, snow and hail,

prevented the crew of the ship, the ship's agents and a contracting firm called in immediately on the morning of 4 March, from taking effective steps to stop the oil from spreading. Within 6-7 hours of the incident, nearly all the oil had settled over a length of about eight kilometres on embankments and quays of the port of Hamburg. Because of the viscosity and persistency of the oil, it was not washed away through the water by tidal and other currents.

2.3 Clean-up Operations

2.3.1 Immediately after the escape of the oil was noted, the shipowner's agents employed a clean-up firm to deal with the pollution. On 4 March 1982 the responsible authority of the State of Hamburg, the Behoerde fuer Bezirksangelegenheiten, Naturschutz und Umweltgestaltung (Environmental Protection Office, BBNU), issued an administrative order demanding the owner to clean up the pollution damage. The owner employed two firms, namely Messrs Pahl and Messrs ARGE, for this operation.

2.3.2 The clean-up operations were carried out by cleaning the rocks and the stones of the port embankments with hot pressurised water. No solvents or dispersants were used because this was not allowed by the authorities of the State of Hamburg. The cleaning operations took ten weeks. After their completion, the work was accepted by the authorities of Hamburg as sufficient. The organisation of the clean-up operation and the problems faced are described in great detail in an excellent report submitted by the UK P & I Club, together with about 700 photographs showing the equipment used, the method of work, the extent of the pollution at the beginning of the operations and at different times, and the success of the clean-up work at the end of the operations. This report is available to delegates for perusal in the IOPC Fund's offices.

2.3.3 The clean-up operations by the two firms were based on contracts concluded between these firms and the UK P & I Club as the shipowner's insurer. The contracts were based on tariffs which have to be applied under the law of the State of Hamburg for work of this nature in the area of the port of Hamburg. It would not have been possible nor allowable to contract at different rates.

2.3.4 The clean-up operations were organised and co-ordinated by a surveyor appointed by the UK P & I Club. Experts from the International Tanker Owners Pollution Federation Limited (ITOPF) were also jointly employed by the P & I Club and the IOPC Fund; they reported to the Director throughout the operation. The Director himself visited the site twice and was always in close contact with the authorities and the surveyors and discussed with them the extent of the operations.

2.4 Claims

2.4.1 After the termination of the clean-up operations the Director held discussions on the claims and their justification with BBNU, the UK P & I Club and the liquidator of the shipowner's limitation fund established at the Amtsgericht Hamburg. The claims that have now been finally submitted by both the BBNU and the UK P & I Club have, with the exception of the claim for interest, been accepted by the liquidator and are considered reasonable by the Director. They are submitted to the Executive Committee for approval. These claims are as follows.

2.4.2	<u>BBNU</u>	DM
(a)	Claim for providing booms through different agencies	9 863.71
(b)	6% administrative surcharge on (a)	591.82
(c)	Booms from German Navy, paid for by BBNU	73 587.75
		<u>84 043.28</u>
		(£21 600)

The claims are supported by detailed documentation and explanations. The liquidator of the CLC limitation fund has accepted this claim as reasonable; the Director shares his opinion.

2.4.3 UK P & I Club

	DM
2.4.3.1	
(a) Expenses paid to two clean-up contractors	20 101 415.82
(b) Expenses paid by UK P & I Club for cleaning of boats & other equipment polluted as result of incident	19 267.23
(c) Repair of roads etc damaged as result of use of heavy equipment for clean-up operations	14 669.89
(d) Surveyors' costs to the extent that they were incurred for organisation and co-ordination of clean-up work. (These charges have still to be specified; the figure given is an estimated amount)	35 000.00
Total	<hr/> 20 170 352.94 (£5 185 180)

This amount has been accepted by the liquidator of the CLC limitation fund and is also considered reasonable by the Director. Detailed documentation has been submitted to the IOPC Fund specifying and justifying the amounts claimed.

2.4.3.2 In addition to the amount stated in paragraph 2.4.3.1 above, the UK P & I Club claims interest on this amount. The claim is at a rate of 12% and amounts to approximately DM1 000 000 (about £257 000). The liquidator of the limitation fund has rejected this claim since, according to his opinion, no interest is payable under German law. The Director has taken the same position. It has not been possible to agree with the UK P & I Club on this claim.

2.4.4 Surveyors' Expenses

In addition to claims, the IOPC Fund has incurred expenses for the employment of surveyors. In accordance with the general agreement which has been applied between the IOPC Fund and P & I Clubs in all pollution cases dealt with so far, the IOPC Fund pays a proportion of the costs for surveyors jointly employed by the IOPC Fund and the P & I Club, calculated on the amount of compensation payable by the IOPC Fund and the UK P & I Club. In this case, the IOPC Fund's share has been fixed at 51.5%. The costs to be refunded to the UK P & I Club for charges made by ITOPF amount to £2 032.55. The IOPC Fund's share of the costs for the local surveyor in Hamburg have not been calculated exactly, but are likely to be less than DM5 000 (£1 280).

2.5 The CLC limitation fund established at the Amstgericht Hamburg amounts to DM10 020 306.00 (£2 575 914) plus interest thereon. This amount will be distributed to the two claimants in the very near future. The exact amount that claimants will receive from this fund cannot be calculated until after the interest accrued, which is likely to be minimal, has been fixed. Without regard to the claim for interest and the interest accrued on the CLC limitation fund, the IOPC Fund's liability arising out of this incident is as follows:

	DM	
BBNU	84 043.28	
UK P & I Club	20 170 352.94	
	<hr/>	
	20 254 396.22	
Plus possible claim for interest	1 000 000.00	
	<hr/>	
	21 254 396.22	
Estimated surveyors' costs	13 000.00	
	<hr/>	
Sub-total	21 267 396.22	(£5 467 197)
Minus CLC limitation fund	- 10 020 306.00	
	<hr/>	
TOTAL	11 247 090.22	(£2 891 283)

Having assessed these claims and considered them reasonable, the Director now submits them to the Executive Committee for approval.

2.6 Breaking of Limitation

As mentioned in the Annex to document FUND/EXC.9/2 (paragraph 5.3), the Director has not been able to establish any facts on which it would be possible to prove that the incident occurred as a result of the owner's personal fault or privity.

3 CASTILLO DE BELLVER

(South Africa, 6 August 1983)

3.1 The VLCC CASTILLO DE BELLVER (138 822 GRT), flying the flag of Spain, caught fire on 6 August 1983, 70 miles north-west of Cape Town, South Africa. The tanker was carrying 252 000 tonnes of crude oil on a voyage from the Gulf to Spain. The reason for the outbreak of fire is not yet known.

3.2 As a result of the fire, during which two crew members died, the ship broke in two. The stern section of the ship turned turtle and sank soon after the incident, about 26 miles from the South African coast. An unknown quantity of oil is still contained in the stern section. The bow section containing an estimated 60 000 tonnes of crude oil was towed away from the coast to reduce the risk of further pollution before it was sunk about 136 miles from land at a depth of about 800 metres.

3.3 As a result of the incident, unknown quantities of oil either burnt or escaped into the sea. Most of the oil which escaped into the sea seems to have been driven away by wind from the land and the slick at sea was later breaking up and dispersing. So far only relatively small quantities of oil appear to have reached the land. An estimate of the pollution damage caused by this incident cannot yet be given.

3.4 South Africa is a Member of the CLC but not of the Fund Convention. The owner is liable under the CLC to cover the pollution damage that may have been caused. The IOPC Fund may be liable to pay indemnification to the owner or his insurer, under Article 5 of the Fund Convention, if the conditions of Article 5 are met. The highest possible amount that may have to be paid by the IOPC Fund is about £4 million. An estimate of the damage will be given when the IOPC Fund's surveyor has submitted his report.

4 EIKO MARU NO 1
(Japan, 13 August 1983)

4.1 The tanker EIKO MARU NO 1 (992 GRT), flying the flag of Japan, and laden with 2 450 tonnes of heavy fuel oil "A", collided with the Panamanian vessel CAVALRY off Karkuwazaki, Miyagi, on 13 August 1983. As a result of the collision the No 4 starboard cargo tank of the EIKO MARU NO 1 was damaged, and all 368 tonnes of cargo oil in that tank escaped into the sea.

4.2 The clean-up work, which was carried out immediately after the incident, lasted for three days. About 3 000 cans of detergent were used to disperse the oil. The first estimate of the damage is about ¥50 million (£136 000) for clean-up costs and about ¥20 million (£54 000) for fishery damage.

4.3 The limitation amount under the CLC of the EIKO MARU NO 1 is ¥39 445 920 (£107 190; limitation tonnage 857.52).
