



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE -
10th session
Agenda item 3

FUND/EXC.10/3
1 August 1983
Original: ENGLISH

INFORMATION ON AND APPROVAL OF
SETTLEMENT OF CLAIMS

Note by the Director

1 Article 26.1 (b) (ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the IOPC Fund and take all other steps envisaged in relation to such claims in accordance with Article 18.7 of the Fund Convention.

2 To enable the Executive Committee to fulfil these functions, details of the thirteen incidents with which the IOPC Fund is at present dealing are given in the Annex. Documents FUND/EXC.7/2, FUND/EXC.7/2 Add.1 and FUND/EXC.9/2, submitted to the Executive Committee's seventh and ninth sessions contain the information available at the time; reference is made to these documents.

3 The developments regarding these incidents since the Executive Committee's ninth session can be summarised as follows:

- (a) All claims arising out of the FURENÄS, the SUMA MARU NO 11 and the KIFUKU MARU NO 35 incidents have been settled.
- (b) The settlement of claims has reached the very final stages in the HOSEI MARU, SHIOTA MARU NO 2 and FUKUTOKU MARU NO 8 incidents.
- (c) With regard to the TARPENBEK incident, the IOPC Fund has been sued by the shipowner, the United Kingdom Government and two local Councils. The IOPC Fund is investigating factual evidence regarding the actual spill of persistent oil from the vessel.

- (d) Concerning the JOSE MARTI incident, the IOPC Fund is waiting for the results of negotiations between the Swedish Government and the shipowner on the possibility of the latter's exoneration from liability, or the outcome of Court proceedings between these two parties.
- (e) In respect of the GLOBE ASIMI incident, the IOPC Fund is investigating whether the shipowner had complied with the requirements laid down by the instruments enumerated in Article 5.3 of the Fund Convention, with a view to deciding whether the IOPC Fund is liable for indemnification to the owner.
- (f) Regarding the RYUEI MARU NO 8 and the EISHIN MARU incidents, it is unlikely that claims will be made against the IOPC Fund.
- (g) With regard to the SHINKAI MARU NO 3 incident, claims may be made against the IOPC Fund, but these claims are unlikely to be substantial.

ANNEX

(The conversion of figures in national currencies into sterling is, unless otherwise stated, as at 7 July 1983)

1 TARPENBEK
(United Kingdom, 21 June 1979)

As set out in paragraph 1 of the ANNEX to document FUND/EXC.9/2, investigations into the question of whether there actually was a spill of persistent oil have been carried out by the IOPC Fund's surveyor. Several discussions have been held with witnesses of the salvage operation and several documents relevant to the incident and to the pumping operation have been reviewed. However, the surveyor was unable to find positive evidence of a particular spill of persistent oil at a particular time. The surveyor is of the opinion that the Plaintiff's statement has failed to substantiate its claim on the alleged spill of persistent oil because it depends heavily on theoretical construction of circumstances rather than on a detailed observation of the pumping and parbuckling operations. Further investigation to strengthen the IOPC Fund's defence is being carried out.

2 FURENAS
(Sweden, 7 January 1981)

2.1 All claims arising out of the FURENAS incident have been paid. The final amounts of the claims paid by the IOPC Fund and the shipowner are as follows:

Danish Claim		<u>DKr</u>
Danish Government		396 150.00
Helsingør Kommune		8 809.35
Karlebo Kommune		3 673.50
Danish Boatowners		7 800.00
Fishermen		2 156.95
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Total Danish Claim		418 589.80
Swedish Claim		<u>SKr</u>
Swedish Government		3 500 000.00
Helsingborg Port Authorities		24 081.00
Clean-up operator		241.000.00
Swedish Boatowners		35 050.00
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Total Swedish Claim		3 800 131.00
Total Third Party Claims	*SKr	4 111 519.95
Legal Fees	SKr	5 560.00
Surveyor's Fees	SKr	6 492.00
Less Recovery from KARNAN	SKr	- 506 542.00
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		3 617 029.95
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* NOTE: Danish claims amounting to DKr418 589.80 have been converted into SKr at the rate of DKr1 = SKr0.7439 as at 1 February 1982.

2.2 The Swedish hull insurers, on behalf of the other parties involved, recovered the sum of SKr594 325 (including interest) from the owner of the KARNAN, the other ship involved in the collision. In negotiations with the other parties involved, the hull insurers, cargo interests and the owner, it was agreed that the IOPC Fund and the P & I Club together were entitled to the sum of SKr506 542, including interest accrued, of which SKr449 961.26 is the IOPC Fund's share.

2.3 The shipowner's liability under the CLC amounts to SKr612 443.66 and indemnification paid by the IOPC Fund to the owner is SKr153 110.92 (£13 131). The total payment is therefore shared between the IOPC Fund and the shipowner as follows:

	IOPC Fund's Share	Shipowner's Share	Total
	SKr	SKr	SKr
Total Third Party Claim	3 499 076.29	612 443.66	4 111 519.95
Legal Fees	4 938.95	621.05	5 560.00
Surveyor's Fees	5 766.84	725.16	6 492.00
<u>Less</u> Recovery from KARNAN	-449 961.26	-56 580.74	-506 542.00
Indemnification	153 110.92	-153 110.92	-
TOTAL	3 212 931.74	404 098.92	3 617 029.95
	(£275 551)	(£34 657)	(£310 208)

3 HOSEI MARU

(Japan, 21 August 1980)

3.1 All third party claims arising out of the HOSEI MARU incident as set out in paragraph 7.1 of the Annex to document FUND/EXC,7/2, have been settled. The payments made by the IOPC Fund and the shipowner total ¥249 089 648 (£676 874) out of which the IOPC Fund has paid ¥213 323 728 (£579 684)

3.2 Limitation proceedings at the Sendai District Court, Japan, were completed at the beginning of August 1982. No claims other than those already settled have been submitted against the limitation fund.

3.3 The payment of indemnification, amounting to ¥8 941 840 (£24 298) to the shipowner and legal and surveyor's fees estimated at ¥20 000 000 (£54 347) are still open since no communication has yet been received from the P & I Club as to the formal termination of the limitation proceedings. Legal fees of ¥455 800 (£1 238) for the IOPC Fund's lawyer to investigate the possibility of breaking the shipowner's limit of liability have been paid by the IOPC Fund.

4 JOSE MARTI

(Sweden, 7 January 1981)

4.1 The latest information on the development of the JOSE MARTI incident as well as an outline of the legal questions relating to

the IOPC Fund's liability are contained in paragraph 3 of the Annex to document FUND/EXC.9/2. Specific referenece to this document is made. The limitation fund under CLC has still not been established.

4.2 The IOPC Fund is awaiting further developments in negotiations between the Swedish Government and the shipowner, concerning the latter's liability for pollution damage, as well as the outcome of court proceedings between the two parties.

5 SUMA MARU NO 11

(Japan, 21 November 1981)

5.1 The limitation proceedings which had been commenced at the District Court of Fukuoka, Japan, were completed at the end of May 1983. No claims other than those reported in paragraph 10.2 of the Annex to document FUND/EXC.7/2 have been made against the liquidator of the limitation fund.

5.2 The IOPC Fund has accepted claims amounting to ¥13 823 197 (£37 563), as well as legal and surveyor's fees totalling ¥2 005 990 (£5 451), all of which were reported in paragraph 10.2 and 10.4 of the Annex to document FUND/EXC.7/2.

5.3 The calculation of the total damage and the respective shares of liability is as follows:

	Accepted Claim	Shipowner's Share	IOPC Fund's Share
<u>Owner's clean-up costs</u>	Yen	Yen	Yen
JMDPC	2 940 107		
Subcontractors' clean-up			
Kondo Kaiji Co Ltd	2 500 000		
Hakata Ko Kanri KK	454 000		
Y K Nagayama Shipyard	180 000		
Local fishermen's clean-up	7 500 000		
Shipowner's miscellaneous	249 090		

Total owner's clean-up costs	13 823 197	7 396 340	6 426 857
Surveyors' fees	1 705 990	912 824	793 166
Legal fees	300 000	160 521	139 479
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Sub-Total	15 829 187	8 469 685	7 359 502

	Accepted Claim	Shipowner's Share	IOPC Fund's Share
	Yen	Yen	Yen
Sub-Total	15 829 187	8 469 685	7 359 502
Indemnification		- 1 849 085	1 849 085
	<u>15 829 187</u>	<u>6 620 600</u>	<u>9 208 587</u>
	(£43 014)	(£17 991)	(£25 023)

5.4 The IOPC Fund's share of liability, including indemnification and costs, amounting to a total of ¥9 208 587 (£25 023) was paid in July 1983.

6 GLOBE ASIMI

(USSR, 22 November 1982)

6.1 Whilst no claim for pollution damage has been made against the IOPC Fund, indemnification under Articles 3.2 and 5 of the Fund Convention may have to be made by the IOPC Fund to the owner of the GLOBE ASIMI, as explained in paragraph 11 of the Annex to document FUND/EXC.7/2.

6.2 The IOPC Fund is investigating whether the owner of the GLOBE ASIMI had complied with the requirements laid down in Article 5.3 of the Fund Convention. The IOPC Fund's lawyers in the USSR have informed the IOPC Fund that the certificate with regard to SOLAS 1974 and the 1966 Load Lines Convention were available. However, it has not yet been established whether the GLOBE ASIMI had complied with the requirements laid down in OILPOL 1954, as amended, and COLREG 1972. Legal proceedings which are being held in the City Court of Klaipeda, USSR, have been closely followed by the IOPC Fund's lawyers, with a view to finding out whether there are any indications that the vessel might not have complied with the instruments specified in Article 5.3 of the Fund Convention.

6.3 The limitation fund was constituted at the City Court of Klaipeda, USSR, at an amount of Rbls 1 350 324 (£1 188 770). Indemnification will amount to Rbls 337 581 (£297 192).

7 ONDINA

(Germany Federal Republic of, 3 March 1982)

The claims arising out of this incident as made by the UK P & I Club and by the City of Hamburg, as reported in paragraph 5 of the Annex of document FUND/EXC.9/2, are now being finally assessed. Details of the assessment and the settlements to be negotiated with the claimants will be reported to the Executive Committee in an addendum to this document.

8 SHIOTA MARU NO 2

(Japan, 31 March 1982)

8.1 All third party claims arising out of the SHIOTA MARU NO 2 incident have been paid. The IOPC Fund has also paid its share of the legal and surveyor's fees. The payment of indemnification to the shipowner has been delayed because the IOPC Fund was informed that the Maritime Accident Inquiry Agency, Japan, planned to hear this grounding case. The limitation proceedings have been postponed for the duration of this trial.

8.2 The shipowner's liability under the CLC amounts to Y6 304 300 (£17 131) and the indemnification payable by the IOPC Fund to the shipowner is ¥1 576 076 (£4 282).

8.3 The payments made so far by the IOPC Fund and the shipowner are as follows:

	Total Yen	IOPC Fund Yen	Shipowner Yen
Shipowner's clean-up	300 000		
MSA Clean-up	2 563 306		
JMDPC Clean-up	47 786 708		
Fishery Damage	26 750 000		
Total Third Party Claims	77 400 014	71 095 714	6 304 300
Legal Fees	5 000 000)	7 209 233	639 267
Surveyor's Fees	2 848 500)		
Total payment by IOPC Fund /shipowner	85 248 514	78 304 947	6 943 567
	(£231 654)	(£212 786)	(£18 868)

After payment of indemnification the IOPC Fund's total liability out of this incident will amount to Y79 881 023 (£217 068).

9 FUKUTOKU MARU NO 8
(Japan, 3 April 1982)

9.1 As set out in paragraph 7.1 of the Annex to document FUND/EXC. 9/2, the total claim arising out of the FUKUTOKU MARU NO 8 incident amounts to ¥384 576 195 (£1 045 044). The claims assessed by the IOPC Fund's surveyor are as follows:

	<u>Yen</u>	
JMDPC Clean-up	143 220 707	
MSA Clean-up	1 354 676	
Shipowner's Clean-up	6 688 500	
Fishermen's Clean-up	60 701 120	
Total Clean-up Costs	211 965 003	(£575 992)
Fishery Damage	172 611 192	(£469 052)
TOTAL CLAIM	384 576 195	(£1 045 044)

9.2 The IOPC Fund has paid ¥363 731 755 (£947 262 at the rates of exchange on the days of actual transaction) which represents the total amount claimed minus the shipowner's liability under the CLC. The limitation proceedings have been postponed, pending the hearing by the Marine Inquiry Agency, Japan. Therefore, indemnification to the shipowner has not yet been paid.

9.3 The liability of the shipowner under the CLC amounts to ¥20 844 440 and indemnification payable by the IOPC Fund to the owner is ¥5 211 110 (£14 160). In view of the extraordinary difficulties involved for the surveyor and the lawyer, and the amount of time spent in settling the fishermen's claims, the legal and surveyor's costs will be considerable. They are estimated at Y10 000 000 (£27 174). The possibility of taking recourse action against the owner of the KOSHU MARU, the other ship involved in the collision, is still being investigated.

10 KIFUKU MARU NO 35
(Japan, 1 December 1982)

10.1 The Japanese tanker KIFUKU MARU NO 35 (107 GRT), which was loaded with 250 tonnes of heavy fuel oil spilt about 33 tonnes of her cargo oil during the night of 30 November 1982 while moored at the quay of the port of Ishinomaki, Japan. The incident occurred when, during very bad weather conditions, the vessel's stern got into a gap between the under-surface of the quay and the surface of the water, and was submerged while the bow remained afloat.

10.2 The clean-up operations were carried out by employees of the shipowner, of its associated companies and of other companies contracted by him. The IOPC Fund's surveyor has assessed the costs of the clean-up operations to be ¥3 801 851 (£10 331). No third party claim nor any claim for fishery damage has been made.

10.3 Since the total claim of ¥3 801 851 arising out of this incident is less than the limit of the shipowner's liability under the CLC (¥4 271 560), there is no compensation payable by the IOPC Fund. Indemnification under Article 5 of the Fund Convention is payable to the extent that the damage exceeds the amount equivalent to 1500 (gold) francs per ship's limitation tonnage (92.86 tons). This "roll-back point" is ¥3 203 670 so that the indemnification payable is ¥598 181 (£1 587). This amount has been paid in June 1983. Lawyer's and surveyor's fees have been 100% paid by the shipowner's insurer.

11 RYUEI MARU NO 8
(Japan, 3 February 1983)

11.1 The Japanese tanker RYUEI MARU NO 8 (499 GRT), laden with approximately 800 tonnes of creosote oil, ran aground off Cape Shiriyazaki, Aomori prefecture, Japan, on 3 February 1983. As a result of this incident, substantial damage was incurred to fishery resources in the vicinity. Details of the incident were reported in paragraph 9 of the Annex to document FUND/EXC.9/2.

11.2 Laboratory analysis has revealed that the creosote oil in question does not fall within the term "oil" as defined in the Japanese Act on the Compensation for Oil Pollution Damage which implements the CLC and the Fund Convention. The damage caused by the incident, therefore, does not come under the scope of the CLC and the Fund Convention as implemented in Japanese law. No claim has been made against the IOPC Fund.

12 EISHIN MARU

(Japan, 15 February 1983)

12.1 The Japanese tanker EISHIN MARU (99.74 GRT) leaked heavy oil "B" whilst loading the oil from a shore tank at Yokohama, Japan, on 15 February 1983. Information on the incident was given in paragraph 10 of the Annex to document FUND/EXC.9/2.

12.2 The only damage that arose in connection with this incident was the cost of disposing of the oil collected in a shore tank which was contaminated by sea water. The IOPC Fund has agreed with the shipowner's insurer that this cost cannot be considered as "pollution damage", as defined in the CLC and in the Fund Convention. No claim has been made against the IOPC Fund.

13 SHINKAI MARU NO 13

(Japan, 21 June 1983)

13.1 Whilst refilling the cargo boat AGESHIO MARU with bunker oil (blended heavy oil "A" and "C") at the port of Ichikawa, Chiba Prefecture, Japan, on 21 June 1983, the SHINKAI MARU NO 3 (48.23 GRT) spilled her cargo oil in the sea.

13.2 The incident happened because the valve of the SHINKAI MARU's No 3 tank was inadvertently left open so that the cargo oil in No 1 tank was allowed to flow into No 3 tank, and eventually overflowed into the sea. The precise quantity of oil spilt is not yet known, but is estimated at about 3.5 tonnes.

13.3 Clean-up operations were carried out by commercial operators as well as shore personnel, and were completed on 22 June 1983.

The clean-up costs are roughly estimated at ¥3.5 million (£9 511). It is not yet known whether there will be a claim for fishery damage.

13.4 The shipowner's limitation amount is ¥1 880 940 (£5 111). Indemnification amounts to ¥470 235 (£1 278).

13.5 In view of the small amount of compensation payable by the IOPC Fund and the possibility that the legal costs for establishing the limitation fund may be nearly as high as the recovery from the IOPC Fund, it has been requested by the owner's insurer that in such a case the IOPC Fund may not insist on the establishment of the CLC limitation fund. The Director has promised to bring this matter to the attention of the Executive Committee.
