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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

1 Since the issuance of document FUND/EXC.16/5, further developments have taken place with regard to the JOSE MARTI, JAN, ROSE GARDEN MARU and BRADY MARIA incidents.

2 JOSE MARTI

(Sweden, 7 January 1981)

The Court of Appeal held an oral hearing of the case from 18 August to 18 September 1986. The judgement will be rendered on 24 October 1986 (cf document FUND/EXC.16/5, Annex, paragraph 1).

3 JAN

(Denmark, 2 August 1985)

3.1 As reported in paragraph 7.10 of the Annex to document FUND/EXC.16/5, the claims of the Danish authorities were submitted in July and August 1986. The Director has examined the claim documents in co-operation with the owner's insurer, the Skuld Club. The examination revealed that supplementary information was required with regard to a considerable number of claimed items. A request for further details was made. Satisfactory explanations have now been given on many points, but additional information is still required on several important points.

3.2 As a result of the examination, the Director has raised two questions of particular importance with the Danish authorities, viz the amounts claimed for the use of three state-owned vessels which took part in the clean-up operations and the amounts claimed in respect of the personnel of the Civil Defence Force used for the clean-up operations on the beaches.

3.3 The Director is discussing the claims with the Danish authorities. He hopes that it will be possible to arrive at a settlement in the near future.

4 ROSE GARDEN MARU

(United Arab Emirates, 26 December 1985)

4.1 As mentioned in paragraph 9.14 of the Annex to document FUND/EXC.16/5, the Director raised a number of questions with the shipowner's P & I insurer, the Skuld Club. Some information was provided in September 1986, but the Director considers that several difficult problems remain.

4.2 The Skuld Club has presented its claims against the IOPC Fund as follows:

	US \$
Claims paid: Dh 1 500 000 @ 3.673	408 385.52
<u>Minus</u>	
Limitation amount (estimate)	364 181.80
	<hr/>
	44 203.72
<u>Plus</u>	
Indemnification (estimate)	91 045.45
	<hr/>
	135 249.17
	<hr/>
	(£88 254)

4.3 The exact limitation tonnage is not known to the Skuld Club. The latter has estimated the limitation tonnage at 90% of the gross tonnage (2 517 GRT according to the Skuld Club), which would give a limitation tonnage of 2 265. In the view of the Skuld Club, this is the normal "rule of thumb" for the relationship between these two tonnages.

4.4 The Director has pointed out to the Skuld Club that indemnification of the shipowner under Article 5 of the Fund Convention is paid only if the ship causing the pollution damage was registered in or was flying the flag of a State Party to the Fund Convention (Article 3.2). Since the ROSE GARDEN MARU was neither registered in nor flying the flag of such a State, the shipowner is not entitled to indemnification. It appears that the Skuld Club has accepted that no indemnification will be payable. If this is so, the claim against the IOPC Fund would be reduced to US \$44 203.72 (£28 844).

4.5 As reported in paragraph 9.8 of the Annex to document FUND/EXC.16/5, no limitation fund was set up in the proceedings in the Court of Umm Al Qaiwain. The Skuld Club has stated that the Court did not take into consideration the question of limitation of liability.

4.6 In this context it should be noted that at its 10th session in 1983, the Executive Committee took a decision regarding the requirement to establish a limitation fund. The Committee expressed the view that the IOPC Fund should normally require the establishment of a limitation fund and that this requirement could be waived only in exceptional cases, like the SHINKAI MARU N°3

incident. In any case, it would be for the Executive Committee to decide if the exceptional circumstances of a case allowed the IOPC Fund to pay compensation without the establishment of the limitation fund. In the SHINKAI MARU N°3 case, the Committee agreed that, in view of the disproportionately high legal costs which would be incurred in establishing the limitation fund compared with the limitation amount under the Civil Liability Convention, compensation could be paid, as an exception, without the limitation fund being established (document FUND/EXC.10/5, paragraph 3.1.4).

4.7 Since the judgement of the Court of Umm Al Qaiwain has become final, it will no longer be possible for the shipowner or the P & I insurer to establish a limitation fund. For this reason, the Director considers that there are exceptional circumstances which could justify the IOPC Fund's waiving of the requirement to establish the limitation fund as a condition for the payment of compensation. The Director submits this issue to the Executive Committee for consideration.

4.8 One remaining problem is the factual basis of the claim and the reasonableness of the assessment of damages by the Court. In addition, it has not yet been established that the judgement by the Court was rendered against a party liable under the Civil Liability Convention.

4.9 Discussions on the outstanding points are continuing with the Skuld Club.

5 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

5.1 In paragraph 11.16 of the Annex to document FUND/EXC.16/5, it was reported that the Director had carried out an examination of the claim documents. He was assisted by the IOPC Fund's surveyors who closely followed the developments in the case. Negotiations with the German authorities were held in April and also in August 1986, and agreements have now been reached with regard to the majority of the claimed items.

5.2 Claim from the Authorities in Schleswig-Holstein (DMI 548 224.66, or £458 733)

5.2.1 This claim relates to the on-shore clean-up operations in Schleswig-Holstein. A private company was employed by the authorities for on-shore clean-up work along the northern bank of the River Elbe. The operations were carried out from 5 January till 21 February 1986.

5.2.2 The clean-up operations by this company were carried out in a very efficient and well-organised way. Decisions on measures to be taken were continuously reviewed after careful observation of the latest situation regarding the pollution. The workforce and equipment were kept to the minimum. The IOPC Fund's surveyor was kept well informed of all the operations, and decisions on important measures were made only after consultation with him.

5.2.3 The Director considers that all measures taken for cleaning the Schleswig-Holstein coast were reasonable and that the amounts claimed are also reasonable. The claim in respect of the operations on the Schleswig-Holstein side is, therefore, acceptable in its entirety. The Director has accepted the amount claimed, totalling DM1 548 224.66 (£458 733).

5.3 Claim from the Authorities in Niedersachsen
(DM1 328 833.06, or £393 728)

5.3.1 As reported in paragraph 11.7 of the Annex to document FUND/EXC.16/5, the clean-up operations in Niedersachsen along the southern bank of the River Elbe, as well as on the banks of the River Oste, were carried out by various authorities. Due to this situation, there was some lack of co-ordination and some delay arose in mobilising the personnel and equipment. However, after the initial stage, the operations were carried out in a reasonable way. The Director considers that the claim relating to these operations can be considered reasonable, with the exception of a few items.

5.3.2 In paragraphs 11.8 to 11.10 in the Annex to document FUND/EXC.16/5, it was reported that a further clean-up of the southern embankment of the River Elbe and the embankments of the River Oste was undertaken in the spring of 1986. The work was carried out under the supervision of the IOPC Fund's surveyor, and the Director has accepted the amounts claimed for this work.

5.3.3 The disputed items relate to (a) the use of helicopters (DM24 832.40 claimed), (b) administrative expenses (DM91 988.53 claimed), (c) vessel charges (DM42 099 claimed) and (d) miscellaneous costs (DM29 397.07 claimed).

5.3.4 In respect of the vessel charges, reference is made to paragraphs 5.4.2 and 5.4.3 below.

5.3.5 The claim for administrative expenses relates mainly to costs of permanent staff carrying out work in connection with the incident and in the preparation of claims submitted to the IOPC Fund. The Director has disputed part of these costs, and no agreement has so far been reached.

5.3.6 The total sum claimed for the clean-up operations on the Niedersachsen side has been reduced during the negotiations from DM1 328 833.06 to DM1 327 673.24 (£393 385). The Director has disputed items totalling DM188 317. These items will be discussed further with the German authorities. The Director has accepted the balance, amounting to DM1 139 356.24 (£337 587).

5.4 Claim from the Federal Waterway and Shipping Administration
(DM733 263.67, or £217 263)

5.4.1 The claim from the Federal Waterway and Shipping Administration (WSA) relates mainly to expenses incurred for the

clean-up operation on the River Elbe. WSA dispatched five vessels to collect floating oil in the river during the initial stages of the incident.

5.4.2 However, it proved that these vessels were not effective in the prevailing weather conditions. After discussions with the Director, the IOPC Fund's surveyor therefore agreed with the German authorities that the vessels should be withdrawn on 9 January 1986, with the exception of one skimmer which was used also on 10 January 1986 (see paragraph 11.5 of the Annex to document FUND/EXC.16/5). It was also agreed that aerial reconnaissance by helicopters would be kept to the absolute essential.

5.4.3 The claim for vessel charges for WSA ships amounts to DM584 349.01. As mentioned above (paragraph 5.3.3), there is also a claim from the authorities of Niedersachsen for a vessel amounting to DM42 099. An examination of the claim documents has revealed that two ships (one operated by WSA and one operated by the authorities of Niedersachsen) were kept on stand-by after 9 January 1986. In view of the agreement reached, the Director has disputed the items relating to the stand-by of these vessels after that date. The Director is also of the opinion that the tariffs applied in respect of two of the anti-pollution ships operated by WSA are very high compared with those of commercial vessels. No agreement has yet been reached on the claims for vessel charges.

5.4.4 It is worth noting in this context that the question of which rates should be applied in respect of vessels owned by public authorities participating in clean-up operations has arisen in several cases recently, eg the JAN and BRADY MARIA incidents. The rates are normally fixed by a public authority (such as the Ministry of Finance) at levels which do not necessarily reflect market rates for similar kinds of privately owned commercial vessels. In some cases, the application of the rates fixed by the authorities results in costs per hour that are considerably higher than if privately owned vessels had been used.

5.4.5 WSA has claimed compensation for administrative expenses (DM68 621.79). As in the case of the authorities of Niedersachsen, the claim relates mainly to costs of permanent staff carrying out work in connection with the incident and in the preparation of the claims submitted to the IOPC Fund. The Director has disputed part of the costs. No agreement has yet been reached.

5.4.6 The total claim of WSA amounts to DM733 263.67. The Director has accepted items totalling DM80 292.87 (£23 790).

5.5 Private Claims (DM1 419.37, or £421)

Claims by two private firms have been lodged recently, and the Director has not yet examined the details of the documentation submitted.

5.6 Agreed Claims and Compensation Paid

5.6.1 The following table gives a summary of the situation of the claims settlement at the time of drafting this document.

	<u>Claimed</u>	<u>Agreed</u>	<u>Pending</u>
	DM	DM	DM
<u>Authorities</u>			
Schleswig-Holstein	1 548 224.66	1 548 224.66	-
Niedersachsen	1 327 673.24	1 139 356.24	188 317.00
WSA	<u>733 263.67</u>	<u>80 292.87</u>	<u>652 970.80</u>
	3 609 161.57	2 767 873.77	841 287.80
<u>Private Claimants</u>			
Tankrode Shipping Co	1 333.57	n o t y e t e x a m i n e d	
German Association for the Salvage of the Shipwrecked	<u>85.80</u>	<u>n o t y e t e x a m i n e d</u>	
	<u>3 610 580.94</u>	<u>2 767 873.77</u>	
	(£1 069 802)	(£820 111)	

5.6.2 The German authorities have claimed interest on the above-mentioned amounts. Agreement has been reached in principle on the basis of calculation of such interest.

5.6.3 The amounts claimed by the German authorities include VAT. The Director has agreed to pay compensation with regard to the agreed amounts, inclusive of VAT. The Director will investigate whether the IOPC Fund is entitled to a refund of the VAT.

5.6.4 Since agreement had been reached with regard to the major part of the claims (DM2 767 873.77), the Director agreed, at the request of the German authorities, to pay compensation in respect of the items on which agreement has been reached (cf Internal Regulation 8.4.4). The amount payable was DM2 767 873.77 less the owner's liability under the Civil Liability Convention (DM324 629.47), ie a total of DM2 443 244.30 (£846 438.35). Payment was made on 9 October 1986.

5.6.5 Negotiations concerning the outstanding items will take place in the very near future. The Director hopes that these items can be settled very soon.