



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
26th session  
Agenda item 4

FUND/EXC.26/4  
15 February 1991

Original: ENGLISH

## ANY OTHER BUSINESS

### INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS (FUJI MARU N°3)

#### Note by the Director

1 As reported in the Annex to document FUND/EXC.24/4 (paragraph 19), the Japanese tanker FUJI MARU N°3 (199 GRT) was supplying heavy fuel oil to the unladen tanker KAIEI MARU N°3 in the port of Yokohama (Japan), on 12 April 1990, when a small quantity of oil escaped into the sea due to oversupply.

2 Claims for clean-up costs were submitted for a total amount of ¥6 567 037 (£25 090). These claims have been settled at a total of ¥5 448 431 (£20 815). No further claims are expected. As the limitation amount applicable to the FUJI MARU N°3 is ¥5 352 000 (£20 450), the IOPC Fund will pay only ¥96 431 (£370) in compensation.

3 The parties involved have agreed on an apportionment of liability of 70:30 between the FUJI MARU N°3 and the KAIEI MARU N°3 interests. The sum of ¥1 634 529 (£6 245), representing 30% of the agreed claims, will thus be recovered from the owner of the KAIEI MARU N°3. The IOPC Fund will receive ¥430 329 (£1 644) of this amount.

4 Indemnification of the shipowner, amounting to ¥1 338 000 (£5 110), has not yet been paid.

5 The final calculation of the total damage and the respective shares of liability and fees for the IOPC Fund and the shipowner is as follows:

	<u>Total</u>	<u>Shipowner's</u>	<u>IOPC Fund's</u>
	¥	Share	Share
		¥	¥
Compensation	5 448 431	5 352 000	96 431
Indemnification		- 1 338 000	1 338 000
	<u>5 448 431</u>	<u>4 014 000</u>	<u>1 434 431</u>
Surveyor's fees	353 599	347 341	6 258
	<u>5 802 030</u>	<u>4 361 341</u>	<u>1 440 689</u>
Recovery from KAIEI MARU N°3	- 1 634 529	- 1 204 200	- 430 329
Total payable	<u>4 167 501</u>	<u>3 157 141</u>	<u>1 010 360</u>

6 The shipowner's P & I insurer (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) has requested that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund, as the legal costs that would be incurred in establishing the limitation fund would be disproportionately high (approximately ¥1 850 000), compared with the total of ¥1 434 431 which the shipowner would receive from the IOPC Fund in respect of compensation and indemnification.

7 The Executive Committee has in previous cases decided that the IOPC Fund normally requires the establishment of the limitation fund in order to be able to pay compensation and that this requirement could be waived only in exceptional cases, such as the SHINKAI MARU N°3 case. In that case, the Executive Committee agreed that, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the limitation amount under the Civil Liability Convention, the IOPC Fund could, as an exception, pay compensation without the limitation fund being established (document FUND/EXC.10/5, paragraph 3.1.4).

8 Requests for the waiving of this requirement in five further cases have been considered by the Executive Committee in the past (three at its 22nd session and two at its 24th session). On these occasions, the Committee took into account the Memorandum of Understanding, signed on 25 November 1985 by JPIA and the IOPC Fund, under which JPIA undertakes to repay in full any amount paid by the IOPC Fund in compensation if it is held by the competent court that the shipowner is not entitled to limit his liability under the Civil Liability Convention. In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amounts under the Civil Liability Convention in these cases, and referring to the Memorandum of Understanding, the Executive Committee agreed that the IOPC Fund could, as an exception, pay compensation without the limitation fund being established in the HINODE MARU N°1, FUKKOL MARU N°12, TSUBAME MARU N°16, DAITO MARU N°3 and HATO MARU N°2 cases (documents FUND/EXC.22/5, paragraph 3.2.8, and FUND/EXC.24/6, paragraph 3.4.7). The Executive Committee also authorised the Director to waive the requirement to establish the limitation fund in the KIFUKU MARU N°103 case if a request to this effect were made (document FUND/EXC.22/5, paragraphs 3.2.8 and 3.2.9).

9 The highest limitation amount in the above-mentioned cases was ¥2 495 360 (the DAITO MARU N°3 incident). Compared with these cases, the limitation amount in the FUJI MARU N°3 is not particularly low (¥5 352 000). However, the legal costs which would be incurred in establishing the limitation fund in the FUJI MARU N°3 case would be disproportionately high compared with the amount payable by the IOPC Fund in compensation and indemnification; in fact, the legal costs would exceed that amount. For this reason, and in view of the Executive Committee's decisions at its 22nd and 24th sessions, the Director supports the request that the requirement to establish the limitation fund should be waived in the FUJI MARU N°3 case. He proposes, therefore, that this requirement should be waived in this case.

10 **Action to be Taken by the Executive Committee**

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
  - (b) take a decision on the Director's proposal that the requirement to establish the limitation fund be waived in respect of the FUJI MARU N°3 incident.
-