



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

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INCIDENTS INVOLVING THE IOPC FUND

RIO ORINOCO

Note by the Director

1 The Incident

1.1 The asphalt carrier RIO ORINOCO (5 999 GRT), registered in the Cayman Islands, experienced problems with her main engine whilst en route from Curaçao to Montreal with approximately 9 000 tonnes of heated asphalt cargo and about 300 tonnes of intermediate fuel oil and heavy diesel oil on board. While repairs were being effected in the Gulf of St Lawrence, the ship dragged her anchor in heavy weather and grounded on the south coast of Anticosti Island on 16 October 1990. An estimated 185 tonnes of the intermediate fuel oil was spilled and came ashore east of the grounding position. About ten kilometres of the coastline were heavily polluted, and small patches were spread over a further 30 kilometres. No asphalt cargo was spilled. During subsequent weeks the cargo cooled and a significant part became solid.

1.2 The weather deteriorated and the disabled ship refloated, finally coming to rest wedged between two rock shelves. The RIO ORINOCO was declared a constructive total loss by the hull insurer on 18 November 1990, and the Canadian Coast Guard then assumed control of the ship. Renewed attempts to refloat the vessel were made by the Canadian Coast Guard in December 1990, but these attempts also failed. After extensive preparations, the ship was finally refloated on 7 August 1991 and taken to Sept Iles.

1.3 The RIO ORINOCO was entered with Sveriges Ångfartygs Assurans Förening (the "Swedish Club") in respect of both hull and P & I insurance.

1.4 The limitation amount applicable to the RIO ORINOCO was fixed by the Canadian Court at Can\$1 182 617 (£595 000). The limitation fund was constituted by the Swedish Club by means of letter of guarantee.

2 Clean-up Operations

2.1 The Canadian Coast Guard made attempts to collect oil at sea but with little success in the difficult sea conditions.

2.2 On-shore clean-up operations on Anticosti island were carried out during the period up to 10 November 1990 by contractors on behalf of the shipowner. The operations were terminated for the winter on that date, due to deteriorating weather conditions. By then most of the beaches had been cleaned, and the environmental impact is believed to have been minimal. Some further clean-up was carried out in July 1991.

3 Removal of the RIO ORINOCO, her Bunkers and Cargo

3.1 The Coast Guard decided that the remaining bunkers (some 115 tonnes) should be removed, and this operation was carried out in December 1990. After having discussed the various options for removing the ship with the Swedish Club and the IOPC Fund, the Coast Guard decided to try to refloat the vessel. Due to unusually bad weather, however, it was decided on 21 December 1990 to call off any attempt to remove the vessel until the spring of 1991.

3.2 A Canadian contractor (Groupe Desgagnés) was given the task of removing the vessel under a contract concluded with the Canadian Government. Groupe Desgagnés should, against a lump sum, remove the RIO ORINOCO from her grounded position and take her to a place of safety. The method to be used would consist of removing part of the asphalt cargo so as to facilitate the refloating of the vessel. The contract was based on a "no cure, no pay" formula. Between 23 July and 5 August 1991, some 2 300 tonnes of asphalt were removed. The RIO ORINOCO was refloated on 7 August, and was then towed to Sept Iles. No spill of bunker oil or asphalt occurred during the refloating or during the towing operation.

4 Claims Settlements

4.1 The Canadian Government submitted claims relating to the operations carried out by or on behalf of the Canadian Coast Guard as well as the operations carried out by the Ministry of Environment and the Ministry of Fisheries and Oceans. These claims were approved by the IOPC Fund for a total amount of Can\$11 791 848 (£5 645 200). The IOPC Fund paid the settlement amount in instalments in November 1991, February 1992 and June 1992.

4.2 The Swedish Club submitted subrogated claims in respect of the cost of clean-up and waste disposal. These claims were settled at Can\$2 222 661 (£979 150) by the IOPC Fund. After making a reduction to take account of the limitation amount (Can\$1 182 617), the IOPC Fund paid a total amount of Can\$1 040 044 (£458 635) in respect of these claims.

4.3 Indemnification of the shipowner in the amount of Can\$295 654 (£148 800) has not yet been paid as the limitation proceedings have not been completed.

5 Investigation into the Cause of the Incident

5.1 The Transport Safety Board of Canada has carried out an investigation into the cause of the incident.

5.2 The Report of the Transport Safety Board, dated 25 November 1993, was made available to the IOPC Fund in the middle of January 1994. In the time available, the Director has only been able to make a preliminary study of the Report. A more in-depth examination will be made with the assistance of legal and technical experts.

5.3 The Transport Safety Board states that the RIO ORINOCO grounded after dragging her anchors following a main engine failure. From the findings in the Report, it appears that the underlying cause of the incident was the unseaworthiness of the ship at the commencement of the voyage both as regards the equipment and its maintenance/state of repair as well as regards the crew manning the vessel. In a communiqué from the Transport Safety Board dated 30 December 1993, the RIO ORINOCO is referred to as a substandard ship.

5.4 In the Report it is stated that the vessel's machinery was continually undergoing repairs. It is also mentioned that, due to frequent varied and serious malfunctions and breakdowns, planned maintenance could not be undertaken. It is noted that the RIO ORINOCO had proceeded to the anchorage near Anticosti Island in order to repair the main engine, which had failed several times as a result of the use of heavily contaminated fuel. It is pointed out that the ship had experienced serious and continuing fuel contamination and machinery breakdowns during her two previous voyages. According to the Report, only one of the three generators was fully operational upon departure from Curaçao, and the fuel oil was not always treated before use. The Report also states that the condition of the engine room machinery was not brought to the attention of the Classification Society and that the cumulative effect of the deficiencies was such that it would have called into question the seaworthiness of the ship.

5.5 The Report also criticises the qualifications of the crew. It is stated that the master, the chief officer and the chief engineer did not hold the required Cayman Islands' certification, that the ship did not carry the appropriate number of qualified engineers and that there was no certified radar officer on board. It is also mentioned that the engine room staff was subjected to long hours of physically demanding work in uncomfortable conditions. According to the Report, the constant need for repair of the machinery increased the stress on the crew. The Report expresses the view that these factors together degraded the performance of the crew and compromised safety.

5.6 The Report notes that the principal members of the management team were part-owners of one or more vessels operated by the management company. It is also stated that the vessel's managers were aware of the condition of the vessel with respect to both machinery and manning.

6 The Legal Situation

6.1 On 15 October 1993, the IOPC Fund brought legal action against the owner of the RIO ORINOCO (Rio Number One Ltd), the company which managed the operations of the vessel (Horizon Management Corp. Inc) and the Swedish Club. In the statement filed with the Court, the IOPC Fund requested that the defendants be ordered to pay, jointly and severally, to the IOPC Fund the sum of \$12 831 892 (viz. the aggregate of the amounts paid by the Fund to the Canadian Government and the Swedish Club), plus interest thereon. The IOPC Fund maintained that the incident was due to the fault or privity of the shipowner and argued that the owner was not entitled to limit his liability.

6.2 In the light of the findings of the Transport Safety Board, the Director takes the view that the ship was not seaworthy at the time of the grounding and that the incident was due to this unseaworthiness. The findings indicate, in the Director's view, that the shipowner must have been aware of the condition of the ship and the lack of qualifications of the crew. For this reason, the Director maintains that the incident occurred as a result of the actual fault or privity of the shipowner (Rio Orinoco Number One Ltd) and that the shipowner is not entitled to limit his liability (Article V.2 of the Civil Liability Convention).

6.3 The Rio Number One Ltd was registered in the Cayman Islands. The company was struck from the Companies' Register on 31 March 1992. The shareholders registered for the other companies within the group (Numbers Two to Six) are all nominee shareholders, so that the names of the real shareholders do not appear. The company managing the Rio Orinoco, Horizon Management Corp Inc, registered in Florida, United States, has ceased operations and was involuntarily dissolved on 13 August 1993, for failure to file an annual report.

6.4 The IOPC Fund's lawyer is investigating the financial position of the shipowner and the management company.

6.5 It should be noted that, pursuant to Article VII.8 of the Civil Liability Convention, the shipowner's insurer is entitled to limit his liability even if the incident was caused by the actual fault or privity of the shipowner.

6.6 The question also arises as to whether the shipowner's insurer (the Swedish Club) is entitled to indemnification under Article 5 of the Fund Convention. This issue is being investigated by the Director.

7 Action to be taken by the Executive Committee

7.1 The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as it may deem appropriate in respect of the issues set out in paragraphs 6.1–6.6 above.
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