



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
50th session
Agenda item 3

71FUND/EXC.50/12/Add.2
14 October 1996

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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

1 Professional fees

Previous considerations of professional fees by the Executive Committee

1.1 At its 37th session, the Executive Committee considered the issue of the admissibility of certain claims for professional fees arising out of the *Braer* incident. The Committee's conclusions were as follows (document FUND/EXC.37/3, paragraph 4.2.21):

The Executive Committee decided that reasonable fees for work done would be considered, but that fees would not be paid on a contingency or percentage basis. The Committee took the view that the question of whether and to what extent fees were payable should be assessed in connection with the examination of a particular claim, taking into account the necessity for the claimant to use expert advice, the usefulness of the work carried out by the expert, the quality of that work, the time needed and the normal rate for work of that kind.

1.2 At the Committee's 40th session, the matter of fees was discussed further as regards two firms giving professional advice to a number of claimants and groups of claimants. In a document presented to the Committee (document FUND/EXC.40/6/Add.2), the Director stated that the 1971 Fund did not have any contractual relationship with these firms and that their right to fees from their clients was governed by any contractual arrangement which these firms might have had with the respective claimants. He took the view, therefore, that the 1971 Fund could only compensate professional fees to claimants being entitled to compensation for pollution damage. He had informed the firms that they should submit a detailed breakdown of the work carried out in respect of the individual claims and that, once such breakdown had been received, the 1971 Fund would examine what amount, if any, would be payable in respect of fees incurred by each claimant, on the basis of the criteria laid down by the Executive Committee.

1.3 The conclusions of the Executive Committee were as follows (document FUND/EXC.4/10, paragraph 3.5.36):

The Executive Committee took note of the information concerning professional fees set out in paragraphs 12.1–12.3 of document FUND/EXC.40/6/Add.2. The Committee noted that firms giving professional advice to claimants had no contractual relationship with the IOPC Fund and that their right to fees from their clients was governed by the contractual arrangements which these firms might have with the respective clients. The Committee endorsed the Director's view that the IOPC Fund could pay compensation in respect of professional fees only to claimants who were entitled to compensation for pollution damage.

Director's considerations

1.4 In connection with the *Braer* incident, the 1971 Fund received claims for compensation from a number of claimants who had paid professional fees to two firms of loss adjusters calculated on a percentage basis. With the assistance of the 1971 Fund's and the Skuld Club's technical experts, the Director assessed a reasonable level of fees for the work carried out by the adjusters for each claimant, disregarding the calculation on a percentage basis. A separate examination was then made in respect of each individual claimant. The Director's assessment was accepted on behalf of the claimants who had engaged one of the firms of loss adjusters, and compensation was paid accordingly. The other firm rejected the Director's assessment.

1.5 In the *Sea Empress* case, the latter firm of loss adjusters is also advising a large number of claimants in the fisheries sector and some claimants in the tourism sector. It is understood that the contract between this firm and its clients provides that the fees should be 10% of the amount of compensation paid by the Skuld Club or the 1971 Club to the respective claimant.

1.6 The Director intends to apply in a strict manner the criteria laid down by the Executive Committee in his assessment of whether and, if so, to what extent fees are payable in respect of work carried out in connection with the *Sea Empress* incident by advisers who charge their clients on a contingency fee or percentage basis.

2 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) give the Director such instructions as it may deem appropriate in respect of the admissibility of claims for professional fees.
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