



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971**

EXECUTIVE COMMITTEE
57th session
Agenda item 3

71FUND/EXC.57/6
26 January 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

1 Introduction

1.1 This document sets out the situation as regards claims for compensation arising from the *Sea Empress* incident which occurred on 15 February 1996 in the entrance to Milford Haven in South Wales (United Kingdom). The document deals with a claim for compensation which the Director considers should be referred to the Executive Committee for decision. The document also addresses the cause of the incident and related issues.

1.2 With respect to the incident, the impact of the spill, the clean-up operations and the effects on fishery and tourism, reference is made to documents 71FUND/EXC.52/7 and 71FUND/EXC.55/7.

2 Clean-up operations

As a consequence of storms during January 1998 a small quantity of oily material was exposed at various beaches including Tenby. A short clean-up operation was undertaken by Pembrokeshire County Council to remove this material from Tenby beaches since these beaches are used throughout the year. Other shorelines where some oil was also exposed were left to clean naturally through the effects of rough sea conditions.

3 Claims situation

3.1 General situation

3.1.1 As at 23 January 1998, 931 claimants had presented claims for compensation to the Claims Handling Office, set up in Milford Haven by the 1971 Fund and the shipowner's insurer, Assurancéföreningen Skuld (the Skuld Club). Claims have been approved for a total of £13 065 797. Payments have been made to 635 claimants totalling £12 797 228, of which £6 866 809 has been paid by

the Skuld Club and £5 930 419 by the 1971 Fund. Cheques for a further £268 569 are awaiting collection by the claimants.

3.1.2 A table summarising the claims situation as at 23 January 1998 is reproduced in the Annex.

3.1.3 As set out in paragraphs 3.3 - 3.6 below, final settlements have been reached in respect of the majority of the claims presented. However, it has not been possible to conclude settlements with a number of claimants, and some of these claimants may pursue their claims in court.

3.1.4 In view of the fact that there remain relatively few outstanding claims, it has been decided that the Claims Handling Office will close on 14 February 1998.

3.2 Level of payments

3.2.1 The Executive Committee decided at its 48th session to limit the 1971 Fund's payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. At its 55th session, the Committee authorised the Director to increase the 1971 Fund's payments to 100% of the damage actually suffered by the claimant as assessed by the experts engaged by the 1971 Fund and the Skuld Club.

3.2.2 Following the decision by the Executive Committee at its 55th session, held from 20 to 22 October 1997, to increase the 1971 Fund's payments to 100% of the damage actually suffered by each claimant, the Claims Handling Office made all necessary arrangements to pay the outstanding 25% to all claimants as soon as possible. By 21 November 1997 cheques totalling £2 941 031 relating to the payment of this balance had been made available to all claimants concerned. As at 23 January 1998, payments totalling £2 870 236 had been made to 427 claimants, and cheques for a further £70 795 were awaiting collection by the claimants.

3.3 Claims for clean-up operations

3.3.1 Pembrokeshire County Council submitted an interim claim for £1.1 million in respect of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council prior to the local authority re-organisation on 1 April 1996. Pembrokeshire County Council also submitted claims for the period April-November 1996, amounting to £3.9 million. On the basis of the documentation presented so far, the experts engaged by the Skuld Club and the 1971 Fund have assessed the claims for these periods at £4.0 million. Interim payments totalling this amount were made to the Council in 1996 and 1997. The Council has also submitted claims totalling £185 000 for the period December 1996 - March 1997 and a claim for interest of £300 000. These claims are being examined by the experts engaged by the Skuld Club and the 1971 Fund.

3.3.2 Carmarthenshire County Council submitted claims amounting to £1.3 million on behalf of four district councils and two county councils for clean-up operations carried out during 1996. On the basis of the documentation presented so far, the experts have made a preliminary assessment of the claims for clean-up costs for the period February - March 1996 at £229 000 and the 1971 Fund made an interim payment of this amount to the Council in December 1997. The documentation submitted by the Council is still being examined by the experts.

3.3.3 The major remaining claims in this category have been submitted by the Environment Agency and the French Government for £401 868 and FFr1 491 337 (£150 000), respectively. The assessment of these claims are awaiting a response to queries made by the experts engaged by the Skuld Club and the 1971 Fund.

3.3.4 Four county councils in Ireland have submitted claims totalling Irish pounds 72 734 (£71 000). The experts have made a preliminary assessment of these claims of £33 282 (£29 000) pending clarification of some items from the claimants.

3.4 Property claims

Two hundred and fifty-seven claims have been submitted in respect of damage to property. Claims have been approved and paid by the Skuld Club in the amount of £274 000. Twenty-eight claims totalling £74 000 have been rejected. There are three pending claims in this category totalling £947.

3.5 Fishery claims

3.5.1 Claims have been presented by fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority catch whelks and crustaceans. Claims from 131 fishermen have been approved for a total of £5.5 million.

3.5.2 Most fishermen have agreed with the loss of income assessment made by the experts. However, nine fishermen involved in catching whelks and crustaceans have not accepted the assessment as a full and final settlement of their claims. These claims total £1.6 million, and interim payments have been made totalling £929 000. Nineteen claims for loss of income from fishing, amounting to £782 000, have been rejected by the Skuld Club and the 1971 Fund.

3.5.3 Some fishermen have also claimed for lost fishing gear. Seven claims have been approved at £8 100, and payments totalling £7 900 have been made in respect of these claims. Two claims for £82 000 have been assessed by the experts at £30 000, and interim payments have been made to the claimants for the latter amount. However, the assessments have not been accepted by them as full and final settlements. Fourteen claims relating to fishing gear allegedly lost or damaged as a result of the clean-up operations have been rejected. These rejected claims total £57 945. Some of these claimants were unable to show that they had any fishing gear in the water immediately before the spill, since they had not been fishing at the time. Others alleged that they had lost pots in areas where no clean-up operations or other activities relating to the oil spill were carried out.

3.5.4 Fourteen fish and shellfish processing companies and merchants have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. Of these, two companies trade in white fish, three in whelks, five in crustaceans, two in cockles and two in cockles and mussels. So far interim payments totalling £1.5 million have been made to ten of these companies. Seven claimants in this category, whose claims total £4.2 million, have not accepted a full and final settlement of their claims on the basis of the experts' assessment.

3.5.5 Claims have been received from seven fishermen for £110 000 relating to allegedly reduced catches of whitefish and squid. Five of these fishermen are based in North Devon and two in Swansea, areas of the Bristol Channel which were not affected by the oil from the *Sea Empress*. The experts engaged by the Skuld Club and the 1971 Fund have requested that these fishermen present evidence to support the alleged reduction in catches and to show that the alleged reduction in catches was the result of the *Sea Empress* incident.

3.6 Claims from the tourism industry and related businesses

3.6.1 Claims have been received from 431 operators in the tourism industry. The majority of the claims are from small businesses providing bed and breakfast or self-catering accommodation. Claims from 280 operators in this category have been approved for a total of £1.5 million. Fifty-two claims in this category, totalling £733 460, are being examined or awaiting further information from the claimant.

3.6.2 Eight operators in the tourism industry who have received interim payments of £170 000 have not accepted to conclude full and final settlements of their claims, because they do not agree with the assessment of their claim or because they wish to preserve the right to submit further claims for later periods. The amounts claimed total £302 000.

3.6.3 It will be recalled that the Executive Committee has rejected a number of claims in the tourism sector, since they did not fulfill the criteria for admissibility laid down by the Assembly and the Executive Committee. Reference is made in particular to the decisions taken at the Committee's 53rd session (document 71FUND/EXC.53/12, paragraphs 3.5.15-3.5.33). The Director has rejected 74 claims in this sector, totalling £425 000, since the claimants had not shown that they had suffered any economic loss as a result of the *Sea Empress* incident.

4 Compensation available under the CRISTAL Contract

4.1 At its 55th session, the Executive Committee took note of information concerning the possibility for the victims of the *Sea Empress* incident of obtaining compensation under the CRISTAL Contract (document 71FUND/EXC.55/7/Add.1, paragraph 2.2).

4.2 The United Kingdom delegation stated that, if and to the extent that the claim by the United Kingdom Government were to result in the total amount of the established claims exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue its claim, in its entirety or in part, against the 1971 Fund and would, instead, pursue it against Cristal Ltd. The United Kingdom delegation accepted that this might mean that the United Kingdom Government's claim would be paid later than those of other claimants. This delegation also stated that the Government would notify Cristal Ltd of its claim before the expiry of the two-year time limit laid down in the CRISTAL Contract.

4.3 In a letter dated 27 October 1997, the United Kingdom Government notified Cristal Ltd of its claim, totalling approximately £11-£11.5 million, for the costs and expenses incurred during the clean-up operations resulting from the *Sea Empress* incident. Cristal Ltd confirmed to the United Kingdom Government that this letter was accepted as proper written notice as required under the CRISTAL Contract.

4.4 The Director has been informed that some 70 other claimants have written to Cristal Ltd regarding their claims.

5 Claim submitted to the Executive Committee for consideration

5.1 A claim for £3 807, relating to losses allegedly resulting from the *Sea Empress* incident, has been presented by five doctors who operate a medical centre based in Saundersfoot, South Wales. The claim is composed of the following two elements:

- (a) Loss of income due to a reduced number of temporary residents:
 - (i) Reduction in the number of temporary residents treated
 - (ii) Reduction in the number of temporary resident prescriptions
 - (iii) Reduction in the number of temporary resident night visits
- (b) Increase in the treatment of patients for whom the United Kingdom National Health Service gives no reimbursement:
 - (i) Exposure to pollutants
 - (ii) Exacerbation of asthma
 - (iii) Anxiety/depression and headaches
 - (iv) Advice concerning long-term effects of toxins (pregnancies and asthmatics)

5.2 The claimants have provided the following information as a background to their claim.

(a) *The way in which medical practices are reimbursed for treatment or consultation*

Medical practitioners (both in single and in group practices) are self-employed and hold a contract with the Health Authority to provide general medical services. The Health Authority pays for this service in the form of *per capita* payments for registered patients plus payments for certain additional services, such as minor operations, night visits and immunisation. Extra payments are made for services to temporarily registered patients per item of service provided.

The loss of income from a reduced number of temporary residents would therefore be the loss due to the reduced number of temporary residents' registrations and

an amount related to an average of other items of service provided to temporary residents.

(b) *Additional work consequent upon the Sea Empress incident*

The contract between the Health Authority and general practitioners is based upon an average amount of work done related to an expected illness in the population registered at the practice. Any large scale increase in workload associated for example with a disaster is not catered for in the General Medical Services Provision. Most medication is provided by the State and the practice bears no cost for this. However, the practice does not receive any extra payment for increased work associated with an increased number of consultations over and above the expected provision of general medical services defined in the contract. The claim is therefore related to this unexpected increase.

One comparable situation exists in the case of the treatment of patients registered with the practice as a result of road traffic accidents. In such cases, the compensation to doctors is expected to come from motor insurance or directly from the patient.

5.3 The Director makes the following assessment of the admissibility of this claim. It is accepted that the medical centre in question derives a part of its income from tourism. The claimants have indicated that the income from temporary residents constituted 10.06% of the income in 1996, compared with 11.26% in 1994 and 11.12% in 1995. They have stated that the profit from temporary residents in 1996 was £17 206 out of a total income of £153 801. The Director considers that, in view of the medical centre's limited dependency on income from temporary residents (including tourists), there is not a sufficient degree of proximity between the *Sea Empress* incident and the alleged losses. For this reason he proposes that the claim should be rejected.

5.4 The Director would like to make the following additional observations in respect of this claim. The first item relates to a reduction of income suffered as a result of the decrease in tourism due to the *Sea Empress* incident. For various reasons, such as the weather, there is a considerable variation from one year to another in the number of tourists to a particular area. The Director takes the view that, in any event, the claimants have not shown that the very small reduction in income from temporary residents in 1996 compared with the previous years was due to the *Sea Empress* incident. Consequently, he believes that they have not shown that there was any loss caused by the incident in respect of this item. The second item of the claim relates to an increased workload allegedly caused by the *Sea Empress* incident as a result of local residents having become concerned about possible health problems due to the oil spill. The claimants have not suffered any loss of income but have claimed compensation for additional work in providing medical advice to their local patients. In the Director's view, this work should be considered as being covered by the general reimbursement of doctors under the National Health Service system, as would presumably be the case in the event of various unforeseen increases in workload, due to for example epidemics or industrial accidents. The Director does not consider that the comparison made by the claimants with the treatment of patients injured by road traffic accidents is relevant, since the legislation in this field has the specific purpose of imposing on the motor insurers the cost of medical treatment for road traffic accidents.

6 Investigations into the cause of the incident

6.1 Investigation by the United Kingdom authorities

6.1.1 An investigation into the *Sea Empress* incident was carried out by the Marine Accident Investigation Branch (MAIB) of the United Kingdom Department of Transport. The report of the Chief Inspector of Marine Accidents into the grounding and subsequent salvage of the *Sea Empress* was published on 27 March 1997. The purpose of the investigation was to determine the circumstances and causes of the accident, with the aim of improving the safety of life at sea and avoiding accidents in the future. The report does not attempt to apportion liability, nor to apportion blame, except so far as is necessary to achieve the fundamental purpose.

6.1.2 The MAIB report contains the following summary:

The motor tanker *Sea Empress* loaded with a cargo of 130 018 tonnes of Forties light crude oil grounded off the Middle Channel Rocks in the approaches to Milford Haven at 2007 hours on 15 February 1996. A pilot was on board and the vessel was entering the Haven via the West Channel. Although the main engine was stopped, put astern and both anchors dropped the vessel continued to run ahead and came to rest aground, approximately 5 cables northeast of the initial grounding position. The weather was fine and clear with a west-northwesterly force 4/5 wind.

The vessel is constructed with some side ballast tanks but no double bottom tanks. The starboard side cargo and ballast tanks were ruptured when the vessel first grounded resulting in a heavy trim by the head and a starboard list. A quantity of oil was released from the damaged cargo tanks.

Both the Milford Haven Port Authority's Emergency Plan and the Marine Pollution Control Unit's National Contingency Plan were implemented promptly. Within hours the managers of *Sea Empress* had accepted an offer of assistance from a salvage consortium on the terms of Lloyd's Standard Form of Salvage Agreement, 'No Cure - No Pay' (LOF95).

Sea Empress was manoeuvred into deeper water where she could be anchored and held in position with the aid of the harbour tugs from Milford Haven. This was achieved without further loss of cargo and the intention was to lighten the casualty as soon as possible so as to allow her to enter the Haven and discharge the remainder of her cargo. A suitable lightening vessel was identified and preparations were commenced to ready *Sea Empress* for this operation.

The prediction of gale force winds led to the decision to turn the casualty and re-anchor her so that she would be heading into the wind. This operation was carried out on 17 February while the preparations for lightening were still underway. It was just after this turning operation, and when the weather conditions had already deteriorated, that control of the casualty was lost and she grounded off Saint Ann's Head.

For the next four days efforts by the salvors to regain control of the casualty were unsuccessful and the casualty went aground again on a number of occasions, both off Middle Channel Rocks and Saint Ann's Head. It was not until 21 February that the casualty was successfully refloated and brought under control. She was then taken to a berth inside the Haven where the remainder of her cargo was discharged.

There was no loss of life or serious injuries.

The cause of the initial grounding has been found to be due to pilot error.

The main factors, apart from the bad weather, which resulted in the salvage operation taking so long, were insufficient tugs of the appropriate power and manoeuvrability, together with a lack of full understanding of the tidal currents in the area.

The initial grounding resulted in approximately 2 500 tonnes of crude oil escaping and about a further 69 300 tonnes was lost to the sea during the period of the salvage operation.

6.1.3 The Report states that the pilot error which caused the initial grounding was due in part to inadequate training and experience in the pilotage of large tankers.

6.2 Investigation by the Republic of Liberia

The Commissioner of Maritime Affairs of the Republic of Liberia has published a report of the investigation into the grounding of the *Sea Empress*. The report states:

Neither before, nor at the time the pilot boarded, did the master and pilot discuss any plan of approach, although IMO Res.285(8) was followed in a broad sense. This however would not have had any effect on subsequent events as the master was not aware of the pilot's inexperience with vessels of this size, and he probably would have taken the pilot's advice that there was no east/west current as the pilot had just come out through the entrance to

meet him. The master would have relied on the pilot's experience and logical explanation of his proposed approach.

The pilot had 1 hour and 50 minutes at the time of boarding in order to reach the berth at the Texaco jetty n°1 before low water. The normal passage time is one hour from boarding area. Therefore on this occasion arrival off the berth would have been 50 minutes before low water. The minimum depth at the jetty is 19 metres.

Since he became a Class 2 Pilot in May 1995 the pilot had piloted 'from sea' only three vessels of over 90 000 tonnes deadweight. *Sea Empress* was the largest ship he had solely piloted. It is apparent that the navigation he used for entering the West Channel and the practice of judging the 'gap' between two sets of leading lights had been done regularly with smaller vessels which may be easier to manoeuvre, and may have quicker responses should a correction in course be required due to changes in tide and wind. Without experience of piloting larger vessels he may have assumed that all vessels could be navigated in this way, not fully taking into account the prevailing conditions of wind and tide.

The course made good since entering the channel was more likely nearer 040° than 025° or 030° as steered and led the vessel over the 15 metre contour. The helmsman's comment about the vessel not steering could be attributed to the water cushion against the rock wall of the channel edge prior to grounding.

It is concluded that the grounding occurred because:

- (a) The pilot made insufficient allowance for the tidal cross current on entering the channel believing that at that time there would be no cross current.
- (b) The pilot did not use the leading lights from his boarding position to ascertain on the run to the channel entrance if there was any cross current.
- (c) There were insufficient control procedures by the harbour/pilot authorities to:
 - (1) monitor the approach of deep draft vessels when entering or leaving the port, and advise the pilot of the vessel if he was off the leading line, and by how much; and
 - (2) monitor closely the annual advancement of junior pilots until they have suitable experience for the tonnage the licence permits and until they become fully qualified Class 1 pilots.

6.3 Director's consideration of the reports

6.3.1 The Director has examined, with the assistance of the 1971 Fund's solicitors, the two reports on the investigations into the cause of the *Sea Empress* incident. He has also obtained an Opinion from an eminent expert on maritime law, Mr Geoffrey Brice QC.

6.3.2 In his Opinion, Mr Brice has stated that there can be no doubt that the immediate cause of the incident was the pilot's error in the navigation of the *Sea Empress* and that poor training and his lack of experience were relevant to the question why he made such an error. In Mr Brice's view, there were reasons to criticise the master and the chief officer for failing to be alert to the fact that the *Sea Empress* was not lining up on the leading lights and for not having a proper planned approach to Milford Haven when under pilotage. He has expressed the view that these failures could be said to have contributed to the occurrence of the initial grounding. He has maintained, however, that there seems to be no reason to believe that the shipowner himself, ie at board level or at the level to which the board had delegated its function, was at fault. He has stated that he does not believe, therefore, that it is realistic to contemplate breaking the shipowner's limit under the 1969 Civil Liability Convention.

6.3.3 On the basis of the advice obtained, the Director considers that there are no grounds on which the 1971 Fund could challenge the shipowner's right to limit his liability. He also maintains that there are no grounds on which the 1971 Fund could oppose the shipowner's right to indemnification under Article 5.1 of the 1971 Fund Convention.

6.3.4 The Director is considering further whether there is a possibility for the 1971 Fund of taking recourse action against third parties in order to recover amounts paid by it in compensation. He will report his findings in this regard to the Committee in due course.

7 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident;
- (c) to give the Director such instructions as it may deem appropriate in respect of the admissibility of a claim by a medical centre (paragraph 5);
- (d) to decide whether the 1971 Fund should challenge the shipowner's right to limit his liability or to oppose his right of indemnification under Article 5.1 of the 1971 Fund Convention (paragraph 6);
- (e) to note the Director's intention to consider further whether the 1971 Fund should take recourse action against third parties (paragraph 6.3.4); and
- (f) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.

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STATUS OF CLAIMS AT 23 JANUARY 1998

		Submitted		Approved		Paid	
		Claimants	Amount £	Claimants	Amount £	Claimants	Amount £
1	Clean-up operations						
	1. Councils - UK	5	6 727 546.17	5	3 927 713.04	5	3 925 782.46
	2. Other public bodies	6	1 854 822.45	2	1 116.80	2	1 116.80
	3. Charities	6	88 565.77	4	5 265.04	4	5 265.04
	4. Irish County Councils	4	72 734.17				
	5. French Government	1	150 000.00				
	Sub-total	22	8 893 668.56	11	3 934 094.88	11	3 932 164.30
2	Property damage						
	1. Boats and moorings	103	182 933.63	95	159 733.54	95	158 846.20
	2. Buildings	41	41 999.31	38	24 415.11	38	24 260.74
	3. Lost Fishing Gear	28	164 603.78	9	38 522.60	8	38 291.40
	4. Other items	61	123 203.99	49	50 949.41	49	50 833.03
	Sub-total	233	512 740.71	191	273 620.66	190	272 231.37
3	Fishing industry						
	1. Loss of income	163	8 902 807.84	131	5 501 982.90	130	5 415 874.29
	2. Contaminated stock (oysters)	1	186 504.71	1	111 824.91	1	111 824.91
	3. Processors/Merchants	14	5 232 380.11	10	1 531 285.49	10	1 521 843.91
	4. Other	52	594 337.99	29	98 690.92	26	92 262.62
	Sub-total	230	14 916 030.65	171	7 243 784.22	167	7 141 805.73
4	Tourism industry	430	4 795 577.24	279	1 485 936.15	260	1 326 625.91
5	General	16	572 304.44	5	107 817.95	5	107 817.95
	TOTAL	931	29 690 321.60	657	13 045 253.86	633	12 780 645.26

Note: Paid amounts do not include cheques awaiting authorisation or collection