



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

71FUND/EXC.58/10
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INCIDENTS INVOLVING THE 1971 FUND

VISTABELLA

Note by the Director

Summary:	The Court of Appeal rendered a judgement in March 1998.
Action to be taken:	Information to be noted.

The incident

1 The sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, was being towed by a tug on a voyage from a storage facility in the Netherlands Antilles to Antigua. The tow line parted and the barge sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity which remained in the barge is not known.

2 The *Vistabella* was not entered in any P & I Club. The vessel was covered by a third party liability insurance with a Trinidad insurance company. The insurer has argued that the insurance does not cover this incident. The limitation amount applicable to the ship is estimated at FFr2 354 000 (£245 000). No limitation fund has been established. It is unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

3 The 1971 Fund paid compensation amounting to FFr8.1 million (£986 500) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands in the amounts of FFr110 000 (£11 040), US\$6 100 (£3 200) and US\$2 000 (£1 000), respectively. Further claims against the 1971 Fund are time-barred.

4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government has withdrawn from the proceedings.

5 In a judgement rendered in 1996, the Court of first instance held that the 1969 Civil Liability Convention was not applicable, since the *Vistabella* had been flying the flag of a State (Trinidad and Tobago) which was not Party to that Convention, and instead the Court applied French domestic law. The Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer. The Court held that it was not competent to consider the 1971 Fund's recourse claim for damage caused in the British Virgin Islands. The Court awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories.

6 In October 1996 the Executive Committee took the view that the judgement was wrong on two points. Firstly, the 1969 Civil Liability Convention which formed part of French law applied to damage caused in a State Party to that Convention, and this was independent of the State of the ship's registry. Secondly, the French courts were competent under that Convention to consider claims for damage in any State Party.

7 The Executive Committee decided, however, that the 1971 Fund should not appeal against this judgement as regards the applicability of the 1969 Civil Liability Convention, as it would hardly have any value as a precedent in other cases. The Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and the amount paid by the Fund for damage outside these territories was, in the Committee's view, insignificant.

8 The insurer appealed against the judgement on the basis that French courts had no jurisdiction over foreign insurers.

Recent developments

9 The Court of Appeal rendered its judgement on 23 March 1998. In its judgement - which dealt mainly with procedural issues - the Court of Appeal held that the 1969 Civil Liability Convention applied to the incident, since the criterion for applicability was the place of the damage and not the flag State of the ship concerned. The Court further held that the Convention applied to the direct action by the 1971 Fund against the insurer. It was held that this applied also in respect of an insurer with whom the shipowner had taken out insurance although not having been obliged to do so, since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.

10 The case has been referred back to the Court of first instance which will have to decide on the merits of the case as regards the direct action taken by the 1971 Fund against the insurer.

Action to be taken by the Executive Committee

11 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 this incident.
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