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COMPENSATION
FUND 1971

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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

Summary:	At the 1971 Fund's request, the shipowner has provided additional information on a number of points which are relevant for the determination of whether the incident was due to the fault or privity of the shipowner.
Action to be taken:	Decide whether the 1971 Fund should challenge the shipowner's right to limit his liability.

1 **Further investigation into the cause of the incident**

1.1 **Request by the 1971 Fund to the shipowner for further information**

1.1.1 Following the Executive Committee's instructions at its 57th session to the Director, the 1971 Fund has in a letter dated 6 March 1998 invited the shipowner to clarify the allegations made in the MAIB report that there was a failure of the master and the pilot to discuss and formulate in good time, or at all, a pilotage passage plan which could be agreed and understood prior to entry into Milford Haven. In the letter the 1971 Fund has mentioned that, according to the MAIB report, there was also a failure to keep a strict watch to verify that the pilot was handling and navigating the ship correctly. In the letter, the 1971 Fund has stated that the provision and implementation of proper procedures to ensure safe entry of a laden VLCC such as the *Sea Empress* into port are matters which are the personal responsibility of the shipowner. The 1971 Fund has also stated that a comprehensive passage plan should have been formulated, discussed and understood by the master, deck officers and the pilot and that it appeared not to have occurred in this instance. The 1971 Fund has made the point that, although it appears that there were standing orders covering such matters, port entry is a matter of particular significance with a large laden tanker and shipowners should have a system in place to check and ensure that their standing orders were understood and routinely complied with.

1.1.2 The 1971 Fund has in the letter invited the shipowner to explain the general position in relation to these issues and to provide the following information:

- a) Details of the standing orders given by the shipowner/managers in relation to the procedure for formulation and discussion of a pilotage passage plan and for monitoring the actions of the pilot. A copy of the standing orders and pilotage passage plan, together with the tanker check list and pilot card provided to Pilot Pearn.
- b) Copies of all available documents relating to the training of the master and senior crew of the *Sea Empress*. Details of how and when the officers were trained in bridge team management and of the bridge team management training material provided, as well as copies of such material in documentary form (in whatever language). If the bridge management training material was on video details of how frequently the video was shown.
- c) Details of the systems the shipowner/managers had in place and the steps taken by them, both in this case and generally, to ensure that their standing orders were understood and complied with by their master and officers. Details of how the shipowner monitored whether there was appropriate bridge team management and of what action he took if there was not appropriate bridge team management.
- d) Details of the steps taken to inform the master and officers of the *Sea Empress* of factual information about the entry into Milford Haven and the apparent lack of a VTS system.
- e) Copies of documentation relating to prior casualties involving:
 - i) *Sea Empress* and other vessels in the same ownership;
 - ii) the *Sea Empress* master or senior officers.
- f) Copies of:
 - i) List of all navigational publications on board *Sea Empress*;
 - ii) Bridge logs for this and previous voyages of *Sea Empress*.

1.2 Additional information provided by the shipowner

1.2.1 In reply to the letter from the 1971 Fund, the shipowner has suggested that if there are no good reasons for disputing the right to limit, then there are advantages both to the shipowner and to the 1971 Fund in establishing this sooner rather than later. The shipowner has pointed out that it is unclear in which court(s) proceedings relating to disputed claims may be commenced. The shipowner has expressed concern that this gives rise to the risk of inconsistent results and extra cost, a risk which he considers could be minimised if the shipowner could commence limitation proceedings in London. The shipowner has maintained that he has so far postponed an application for a decree on limitation because the question of whether or not the right of limitation would be opposed by the 1971 Fund is of great importance, both to the way in which the proceedings are formulated and to its implications for claimants.

1.2.2 The shipowner has made it clear that he does not believe that a breach by the master of the managers' standing orders was the cause of the incident, nor that an error of navigation by the master or pilot could justify a finding of actual fault or privity on the part of the shipowner. For that reason, he does not regard the 1971 Fund's enquiries as relevant. Despite this, the shipowner has in a letter of 16 April 1998 responded at length to the questions raised by the 1971 Fund, and he has also provided copies of substantial documentation.

- (a) The shipowner has supplied a copy of the Navigation Manual of the technical managers (Acomarit) setting out the standing orders in relation to pilotage, and of the passage plan for the voyage from Hound Point to Milford Haven and the inward passage plan for Milford Haven. The tanker check list and pilot card have also been provided.
- (b) The shipowner has confirmed that the master and chief officer, who were on the bridge at the time of the grounding, were both fully certificated to the rank of master and had between them 62 years experience in tankers. The shipowner has provided a copy of the outline of a specialized five day bridge team management course which had by the time of the incident been attended by the chief officer, although not by the master. A list of on board training videos in use at the time has also been furnished.
- (c) The shipowner has indicated that there were regular attendances on board to monitor the performance of the vessel and her crew. First, there were visits by Acomarit Marine Superintendents. Secondly, the vessel was attended by independent external auditors, who checked compliance with international and flag State regulations, as well as with Acomarit company procedures. Thirdly, there were inspections by major oil company, flag State and port State inspectors. The shipowner has provided copies of the eight Marine Superintendent reports issued in the 12 months prior to the casualty, together with details of the Acomarit inspection guidelines for Marine Superintendents (which were based on the inspection guidelines adopted by the oil majors, OCIMF Inspection Guidelines for Bulk Oil Carriers). These guidelines include monitoring compliance with the managers' standing orders and procedures, and monitoring bridge procedures, including the adequacy of passage planning, position fixing and maintenance of up-to-date nautical charts and publications. The shipowner has also provided copies of reports prepared by the independent external auditors between March 1993 and February 1996, covering all aspects of the vessel's operation and safety procedures. Finally, copies have been provided of reports of four detailed inspections undertaken by Sun Oil, Chevron and Exxon, the last of which took place in February 1996, together with confirmation that the vessel had been approved by BP, Statoil and Repsol.
- (d) The shipowner has not provided details of steps taken to inform the master and officers of the *Sea Empress* about the entry into Milford Haven and the current lack of a VTS system on the grounds that he does not believe that the absence of the Milford Haven Port radar facility is material in the context of an enquiry into shipowner's right to limit his liability.
- (e) The shipowner has indicated that, to the best of his knowledge, neither the master, nor chief officer had ever been involved in a previous casualty and that the same applies to the vessel herself. The shipowner's response does not extend to the issue of prior casualties involving other vessels in the same ownership.
- (f) The shipowner has provided evidence of the navigational publications on board *Sea Empress* at the time of her grounding, together with part of the Bridge Log and Manoeuvring Book for the voyage to Milford Haven.

1.2.3 Having reviewed this documentation, the 1971 Fund's legal advisors recommended that certain additional documentation should be requested from the shipowner. That request was made by telefax on 22 April 1998. The shipowner co-operated fully and, in a response on 23 April 1998, complied with all outstanding requests and provided further documentation, including copies of the working chart on board the vessel at the time and of the logs (including the radio log) covering the voyage from Hound Point to Milford Haven.

1.3 Director's analysis of the additional information

1.3.1 The Director has considered the documentation recently provided by the shipowner and has taken advice from the 1971 Fund's expert on maritime law, Mr Geoffrey Brice QC, and the Fund's solicitors, as well as from a marine consultant. The consultant has stated that both ship and shore management systems were exemplary and that all navigational charts and sailing directions which should have been on board were on board. He has also made enquiries with the United Kingdom Hydrographic Office which has confirmed that all working charts and pilot books on board the vessel had been corrected and were up to date at the time of the incident.

1.3.2 According to the 1971 Fund's advisors, the documents provided reveal that the shore administration and the monitoring of the navigation practices on board the vessel were of a high standard. The vessel was managed by a company which placed considerable emphasis on the development of quality management systems. The navigation manual and standing orders issued were comprehensive and the reports of the marine superintendents reveal that there was frequent monitoring to ensure that the orders were understood and implemented. On several occasions prior to the incident, superintendents rode with the vessel into berth whilst she was under pilotage, and they were able to observe at first hand the interface between the bridge team and the pilots. The standards of training and competence of the crew were also high. The documentation provided includes not only copies of the inspection reports of the technical managers' own marine superintendents, but also reports issued by external auditors and by several oil companies whose standards are known to be rigorous. These reports indicate that inspections were exhaustive and thorough and confirm the high standards of bridge procedures and navigation. In the last of the independent audit reports before the incident, dated 12 February 1996, the vessel achieved the overall top rating of "very good to excellent".

1.3.3 The information provided reveals that the immediate cause of the grounding was the pilot's error in navigating too close to a shoal area. The master and chief officer were also at fault in failing to discuss with the pilot a detailed plan for entry into the port as they should have done understanding orders, and in failing to take prompt measures to tell the pilot that he was proceeding on a course other than that indicated by the Leading Lights and to appreciate the danger of so doing.

1.3.4 The Director considers, however, that the errors referred to in paragraph 1.3.3 are all matters of simple navigation of the vessel which do not form a basis for challenging the shipowner's right to limitation of liability, since the shipowner had in place an efficient system and standing orders to prevent such errors occurring.

1.3.5 In light of the substantial documentation provided by the shipowner and the analysis set out above, and having consulted the 1971 Fund's advisors, the Director has concluded that there is no ground upon which the 1971 Fund could challenge an application by shipowner to limit his liability. The Director takes the view that it is important that the 1971 Fund takes a position on this issue at this session of the Executive Committee, so as to enable the 1971 Fund, the shipowner and the Skuld Club to cooperate fully in the handling of the outstanding claims and in considering whether the 1971 Fund and the shipowner/Skuld Club should take recourse action against third parties.

1.3.6 Accordingly, the Director proposes that the Executive Committee should decide at this session that the 1971 Fund should not challenge the shipowner's right to limitation of liability.

1.3.7 The Director also takes the view that there are no grounds for the 1971 Fund to oppose the shipowner's right of indemnification under Article 5.1 of the 1971 Fund Convention.

2 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 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;
 - (c) to give the Director such instructions in relation to other aspects of this incident as it may deem appropriate.
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