



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
58th session
Agenda item 3

71FUND/EXC.58/6
20 April 1998

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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

Summary:	A presentation of the claims situation is made. The shipowner's right to limitation and possible recourse by the 1971 Fund are also dealt with.
Action to be taken:	Take note of the information.

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 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, 71 FUND/EXC.55/7 and 71FUND/EXC.57/6.

2 Claims situation

2.1 General situation

2.1.1 As at 15 April 1998, 970 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, Assuranceforeningen Skuld (the Skuld Club). Claims have been approved for a total of £14 474 182. Payments have been made to 662 claimants totalling £13 757 926, of which £6 866 809 has been paid by the Skuld Club and £6 891 117 by the 1971 Fund. Cheques for a further £716 256 are available to claimants.

2.1.2 There have been only limited developments in respect of the claims situation since the Executive Committee's 57th session. The major development relates to the payment of interest. In addition, further payments have been made to Pembrokeshire County Council, totalling £529 757.

2.1.3 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.

2.1.4 In view of the fact that there remained relatively few outstanding claims, the Claims Handling Office closed to the public on 14 February 1998.

2.2 Payment of Interest

2.2.1 The policy of the 1971 Fund is that a claimant's right to interest is governed by the applicable national law (documents FUND/A.4/10, paragraph 21 and FUND/WGR.7/3, paragraph 4.5). On that basis, the Director and the Skuld Club decided that interest should be paid at a rate of 8% per annum on the agreed amount of the respective claims. Calculation of interest was carried out during February and March 1998. As at 15 April 1998, payments relating to interest totalling £216 476 had been made to 320 claimants, and cheques for a further £522 361 are available to claimants.

2.2.2 Calculation of interest on certain more complicated claims is being carried out.

3 The cause of the incident and related issues

3.1 Investigation by the United Kingdom authorities

3.1.1 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.

3.1.2 The MAIB report contains the following summary:

The motor tanker *Sea Empress* loaded with a cargo of 130018 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.

3.1.3 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.

3.2 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/p1 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.

3.3 Consideration at the Executive Committee's 57th session

3.3.1 At the Committee's 57th session the Executive Committee took note of an Opinion which the Director had obtained from an eminent expert on maritime law, Mr Geoffrey Brice QC.

3.3.2 In his Opinion, Mr Brice has stated that there could 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. Mr Brice 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.

3.3.3 On the basis of the advice obtained, the Director expressed the opinion that there were no grounds on which the 1971 Fund could challenge the shipowner's right to limit his liability. He also maintained that there were no grounds on which the 1971 Fund could oppose the shipowner's right to indemnification under Article 5.1 of the 1971 Fund Convention.

3.3.4 The Director informed the Committee that he was considering further whether there was a possibility for the 1971 Fund of taking recourse action against third parties in order to recover amounts paid by it in compensation.

3.3.5 A number of delegations took the view that it was premature to decide whether or not to challenge the shipowner's right to limit his liability while the question of recourse actions against third parties was still under consideration. It was mentioned that the reports of the official investigations had not considered the question of the fault and privity of the shipowner and that it would be appropriate for the 1971 Fund to commission its own investigation on this point. It was suggested that in the legal

proceedings leading to the shipowner establishing his limitation fund, it ought to be possible to obtain certain documents from the shipowner which would assist the Fund in deciding whether or not to challenge the shipowner's right to limit his liability.

3.3.6 Some delegations stated that, whenever appropriate, the Fund should challenge the shipowner's right to limit his liability and should take recourse action. However, they expressed the view that the question of whether the 1971 Fund should take such actions should be considered on a case by case basis.

3.3.7 A number of delegations observed that the question of indemnification was not at issue and that, in accordance with Article 5.1, the 1971 Fund could not refuse to pay indemnification to the shipowner as it had not been shown that the pollution damage had resulted from the willful misconduct of the shipowner.

3.3.8 Some delegations stated that the Executive Committee was in danger of confusing three distinct issues, namely whether to challenge to the shipowner's right to limit his liability, whether to take recourse actions against third parties and whether to refuse to pay indemnification to the shipowner under Article 5.1 of the 1971 Fund Convention, and that, in their view, each should be considered separately.

3.3.9 The Director informed the Committee that the legal advice obtained in respect of this issue was the best available, and that only by the Fund's making its own technical investigation of the casualty might new information be discovered as to the cause of the incident.

3.3.10 Some delegations took the view that such technical investigations were unlikely to reveal any information that had not already been considered in the course of the official enquiries, and that such investigations would therefore not be of benefit to the 1971 Fund. A number of delegations were of the opinion that such a study would not be worthwhile from a cost/benefit point of view. It was also pointed out that any recourse action against third parties would be best undertaken in co-operation with the Club concerned.

3.3.11 Many delegations which took the view that the 1971 Fund should not commission its own investigation into the cause of the incident considered that the Director should nevertheless collect as much information as was reasonably possible in order to determine whether the incident had resulted from the actual fault or privity of the shipowner, and therefore whether it was appropriate for the Fund to challenge the shipowner's right to limit his liability.

3.3.12 The United Kingdom delegation stated that it had also taken an opinion from a senior counsel and the advice which it had received was the same as that given by Mr Brice. That delegation urged the Executive Committee to take a decision in respect of this matter at its next session.

3.3.13 The Executive Committee instructed the Director to collect as much information as was reasonably possible as to the cause of the incident and the prospects for recourse actions in order to enable the Committee to decide at its 58th session whether or not the 1971 Fund should challenge the shipowner's right to limit his liability and whether the Fund should take recourse action against any third parties (document 71FUND/EXC.57/15, paragraphs 3.7.25).

3.4 Further investigation into the cause of the incident

Following the Executive Committee's instructions at its 57th session, the 1971 Fund has invited the shipowner to clarify a number of points in relation to the cause of the incident. On 16 April 1998 the shipowner provided the 1971 Fund with information on these points. This information is being examined by the Director. The result of this examination will be dealt with in an addendum to this document.

4 **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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