



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 3

71FUND/EXC.59/8
12 October 1998

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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the Director

Summary:

There have been only a few developments in respect of the claims situation. Criminal prosecutions have been commenced against the Milford Haven Port Authority and the Harbour Master in Milford Haven. The 1971 Fund's experts are continuing their consideration of the various issues relating to the possibility of the Fund's taking recourse action against third parties.

Action to be taken: Information to be noted.

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, 71FUND/EXC.55/7, 71FUND/EXC.57/6 and 71FUND/EXC.58/6.

2 Claims situation

2.1 General situation

2.1.1 As at 12 October 1998, 996 claimants had presented claims for compensation. Claims have been approved for a total of £15 086 360. Payments have been made to 708 claimants totalling £14 873 007, of which £6 866 809 has been paid by the Skuld Club and £8 006 198 by the 1971 Fund. Cheques for a further £213 353 are available to claimants.

2.1.2 There have been only limited developments in respect of the claims situation since the Executive Committee's 58th session. The major development relates to further payments made to Pembrokeshire County Council, totalling £568 268. Since the 58th session payments of interest totalling £521 243 have been made to a number of claimants, bringing the aggregate amount of interest payments to £737 719 (cf document 71FUND/EXC.58/6, paragraph 2.2.1)

2.1.3 Final settlements have been reached in respect of the majority of the claims presented. It has not been possible to conclude settlements with all claimants, and therefore some claimants may pursue their claims in court (cf paragraph 2.3.1 below).

2.1.4 Since the Claims Handling Office closed to the public on 14 February 1998, claims are being dealt with by the Skuld Club in Oslo and the 1971 Fund in London.

2.2 Claims for fees

2.2.1 Forty claims for fees have been received in respect of work carried out by a firm of claims adjusters which represents a large number of claimants. These claims, totalling £197 000, are being reviewed by experts engaged by the Skuld Club and the 1971 Fund. Further claims for fees are expected.

2.2.2 It will be recalled that the 1971 Fund's policy in respect of fees for work carried out by claimants' advisers was laid down by the Executive Committee at its 37th session. The 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 (document FUND/EXC.37/3, paragraph 4.2.21).

2.3 Time-bar

It should be noted that further claims against the 1971 Fund will become time barred on or shortly after 15 February 1999.

3 Investigations into the cause of the incident and related issues

3.1 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 in 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 did not attempt to apportion liability, nor to apportion blame, except in so far as was necessary to achieve the fundamental purpose. A summary of the MAIB report was set out in paragraphs 3.1.2 and 3.1.3 of document 71FUND/EXC.58/6.

3.2 The Commissioner of Maritime Affairs of the Republic of Liberia published a report of its investigation into the grounding of the *Sea Empress*. The report was summarised in paragraph 3.2 of document 71FUND/EXC.58/6.

3.3 Further information concerning the incident provided by the shipowner is contained in document 71FUND/EXC.58/6/Add.1 which was considered by the Executive Committee at its 58th session. The Committee's discussion was summarised in the Record of Decisions (document 71FUND/EXC.58/15, paragraphs 3.6.5 - 3.6.24).

3.4 At its 58th session, the Executive Committee endorsed the Director's opinion that, in the light of the substantial documentation provided by the shipowner and the advice received from the 1971 Fund's legal and technical advisers, there were no grounds upon which the 1971 Fund could challenge the shipowner's right to limit his liability. The Committee decided, therefore, that the 1971 Fund should not challenge that right. The Committee further decided that there were no grounds on which the 1971 Fund could oppose the shipowner's right of indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/EXC.58/15, paragraph 3.6.25).

3.5 The shipowner is in the process of commencing limitation action.

3.6 As instructed by the Executive Committee at its 58th session, the Director has considered further whether there is a possibility for the 1971 Fund of taking recourse action against third parties in order to recover the amounts paid by it in compensation (document 71FUND/EXC.58/15, paragraph 3.6.27).

3.7 In this context it should be noted that, following the incident, criminal prosecutions were commenced by the United Kingdom Environment Agency against two defendants, namely the Milford Haven Port Authority (MHPA) and the Harbour Master in Milford Haven at the time of the incident. Both defendants face a charge that they caused polluting matter, namely crude oil and bunkers, to enter controlled waters, contrary to Section 85(1) of the Water Resources Act 1991, and that the discharge of crude oil and bunkers amounted to public nuisance. More particularly, the prosecution alleges that MHPA failed in its duties under the Milford Haven Conservancy Act 1983 properly to regulate navigation in the Haven and properly to prevent or reduce the risk of discharge of oil, by inadequately regulating or managing the navigation and/or pilotage of large deep-draughted oil tankers. It is also alleged that, under the Pilotage Act 1987, MHPA failed to provide proper pilotage services for the Haven in that it caused an insufficiently trained and qualified pilot to perform an act of pilotage, alone, on the *Sea Empress*, thereby endangering the marine and coastal environment and posing a danger to public safety. The Harbour Master is accused of failing in his duty safely to control and regulate shipping at the entrance to and within the port.

3.8 The criminal trial is due to begin at Cardiff Crown Court in January 1999. The Director and the 1971 Fund's legal advisers will be closely monitoring the criminal proceedings.

3.9 The 1971 Fund's legal and technical advisers are continuing their consideration of the various issues relating to the possibility of the Fund's taking recourse action against third parties.

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; and
 - (b) to give the Director such instructions in relation to this incident as it may deem appropriate.
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