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OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
62nd session
Agenda item 3

71FUND/EXC.62/7
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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. Legal proceedings have been brought against the shipowner, the Skuld Club and the 1971 Fund in respect of a number of claims.
Action to be taken:	Decide on the admissibility of part of the claim submitted by a county fire brigade.

1 Introduction

1.1 This document sets out the developments 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).

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, 71FUND/EXC.58/6, 71FUND/EXC.59/8, 71FUND/EXC.60/8 and 71FUND/EXC.61/7.

2 Claims situation

2.1 General situation

2.1.1 As at 27 September 1999, 1 034 claimants had presented claims for compensation out of court for a total of £45 933 093. Payments have been made to 778 claimants totalling £16.3 million of which £6.9 million has been paid by the Skuld Club and £9.4 million by the 1971 Fund. Claims have been approved for a further £900 000, but the assessments have not been accepted by the claimants.

2.1.2 Legal proceedings have been commenced in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period.

2.2 Recent developments

2.2.1 Since the Committee's 61st session, further payments totalling £409 000 have been assessed by the 1971 Fund in respect of claims by local authorities which were engaged in clean-up operations.

2.2.2 A claim for £178 000 by the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) has been assessed by the Skuld Club and the 1971 Fund at £170 000. This claim related to work undertaken by CEFAS in monitoring the degree of contamination of fish and shellfish, the results of which were used as the basis for decisions to close, and eventually reopen, various fisheries. The assessment has not yet been approved by CEFAS.

2.2.3 A claim for £243 000 has been presented by the Royal Society for the Prevention of Cruelty to Animals (RSPCA), which was the main organisation involved in the capture, cleaning and rehabilitation of oiled birds. This claim has been provisionally assessed at £130 000, pending clarification in respect of a number of items.

2.3 Claim by county fire brigade

2.3.1 At its 60th and 61st sessions, the Executive Committee considered a claim for £150 000 which had been presented by a county fire brigade for expenses incurred in providing fire fighting services during the salvage operations (documents 71FUND/EXC.60/8, paragraphs 3.2.1 and 3.2.2 and 71FUND/EXC.61/7/1). The claim includes the costs of participation of fire brigade personnel in meetings of the safety group within the Joint Response Centre (JRC), the duties of which included the identification of potential hazards to the community at large and preparing comprehensive contingency plans for evacuation of the local population.

2.3.2 At the Executive Committee's 61st session the United Kingdom delegation expressed the view that when fire fighters were simply present as a precautionary measure because there was a threat of further pollution, fire or explosion, they would have no right to a salvage reward or to share in any award paid to salvors. In the United Kingdom delegation's view, once it was established that a fire fighting service derived no benefit from a salvage operation, by definition their presence must have been primarily for the purposes of counter-pollution and the protection of life of those involved in the operation (document 71FUND/EXC.61/7/1, paragraphs 2.6 and 2.7).

2.3.3 During the Executive Committee's consideration of the issue there was general acceptance that the question was whether, and, if so, to what extent, the activities of emergency services could be considered as falling within the definition of 'preventive measures'. It was pointed out that when emergency services participated in clean-up operations (eg by making vehicles and pumps available for such operations) or in measures which directly prevented or minimised pollution damage, such operations had always been accepted by the 1971 Fund as preventive measures, provided that the criterion of reasonableness was fulfilled. It was stated, however, that if fire brigades were employed purely for their fire fighting capability the operations could not be considered as preventive measures (document 71FUND/EXC.61/14, paragraph 4.6.9).

2.3.4 Following a meeting between the 1971 Fund and the fire brigade at which further details regarding its involvement in the incident were obtained, the Director has given further consideration to the claim, and in particular the extent to which the fire brigade's participation in the salvage operation could be considered as preventive measures.

2.3.5 The policy adopted by the 1971 Fund as regards the admissibility of claims for the cost of salvage operations can be summarised as follows:

Salvage operations may in some cases include an element of preventive measures. Such operations can be considered as *preventive measures* only if the primary purpose is to prevent *pollution damage*. If the operations have another purpose, such as salvaging hull and cargo, the costs incurred are not admissible under the Conventions. If the activities are undertaken for the purpose of both preventing pollution and salvaging the ship and cargo, but it is not possible to establish with any certainty the primary purpose of the operations, the costs are apportioned between pollution prevention and other activities. The assessment of compensation for activities that are considered to be preventive measures is not made on the basis of the criteria applied for assessing salvage awards; the compensation is limited to costs, including a reasonable element of profit.

2.3.6 The fire brigade's intervention in the operation related to two distinct phases, the first whilst the *Sea Empress* was aground outside the entrance of Milford Haven Port and the second whilst she was alongside the jetty inside the port of Milford Haven. Throughout the first phase, the fire brigade personnel manned fire-fighting tugs in the vicinity of the *Sea Empress* to provide fire fighting cover for the tugs holding the tanker, which was continuously leaking crude oil into the sea, and for the operations to salvage the tanker and her cargo, and to act in the event of fire or explosion. When the tanker was alongside the jetty it was found that the ship was severely damaged, and the operation to tranship the remaining crude oil to other tankers alongside the *Sea Empress* was technically difficult and potentially hazardous. During the second phase, at the request of the Milford Haven Port Authority, the fire brigade provided 24-hour emergency standby cover for this operation (document 71FUND/EXC.60/8, paragraph 3.2.1).

2.3.7 Throughout the first phase, whilst the *Sea Empress* was aground outside the Haven, the condition of the vessel and the prevailing weather and sea conditions were such that there was a serious risk of fire and explosion, which could in turn have resulted in further pollution. In so far as the fire brigade was providing fire-fighting cover to react in the event of fire and explosion, the Director considers that the operations had the dual purpose of protecting the life of those involved in the salvage operation and preventive measures, since the fire brigade's early intervention would have contributed to preventing further pollution. Furthermore, the provision of fire-fighting cover for the tugs had, in the Director's view, the same dual purpose.

2.3.8 During the second phase, when the severely damaged tanker was alongside the jetty, there remained a serious threat of fire and explosion during the operation to transfer the remaining cargo. Had a fire or explosion occurred, it could have caused significant further pollution within Milford Haven. The jetty that was used for the cargo transfer operation was abandoned and consequently had no fire fighting facilities. It was therefore necessary for the fire brigade to provide such facilities. Again, the Director considers that the services provided by the fire brigade had the dual purpose of protection of life and preventive measures.

2.3.9 As mentioned above, the Director concludes that the fire brigade's operations during the first and second phases described in paragraphs 2.3.7 and 2.3.8 had a dual purpose, ie both to prevent pollution damage and to protect the life of personnel involved in salvage operations. He proposes therefore that the costs of these operations should be apportioned between pollution prevention and other activities. Since there is no precise basis on which to make such an apportionment, the Director proposes that the costs should be apportioned equally on a 50:50 basis.

2.3.10 The participation of the fire brigade in the JRC had, in the Director's view, the primary purpose of protection of life, and did not have a dual purpose. For this reason, he takes the view that this part of the claim should be rejected.

3 Legal proceedings

3.1 Legal actions against the 1971 Fund

General situation

3.1.1 Fifty-nine writs were issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants. Fifty-one of these writs have been served on the shipowner, the Skuld Club and the 1971 Fund. Agreements on the admissible amounts have been reached in respect of nine of the claims for which writs were originally issued.

3.1.2 In most of the cases where writs have been served on the shipowner, the Skuld Club and the 1971 Fund, agreement has been reached between the parties that, while negotiations on the claims are continuing, the actions need not be pursued, and that the plaintiffs will only be required to submit details of their claim (Statement of Claim) within 21 days of a written request by the 1971 Fund to that effect.

Claim by caravan park operator

3.1.3 On 3 June 1999 a writ relating to a claim by a caravan park operator for £220 000 for costs to mitigate economic loss and professional fees was issued against the shipowner/Skuld Club and the 1971 Fund. The claim in relation to costs of mitigating economic losses was assessed by the Skuld Club and the 1971 Fund at £63 200, but the claim for professional fees, which amounted to £80 000, was rejected on the grounds that it was excessive in relation to the assessed mitigation costs, and that much of the work to which the fees related was not concerned with the preparation of the claim for mitigation costs. On 9 February 1999 the Skuld Club and the 1971 Fund made an offer in writing to the claimant's legal representatives to settle the claim at £63 200 and indicated that the offer remained open for acceptance until 15 February 1999 (the three-year anniversary of the incident). The offer was not taken up by that date, but on 6 August 1999 the claimant's legal advisers wrote to the 1971 Fund stating that the claimant accepted the offer of £63 200 and agreed to withdraw the court proceedings on receipt of payment. The Director informed the claimant that the claim had become time-barred and that the offer could no longer be accepted.

Writs by shipowner/Skuld Club

3.1.4 Three writs have been served on the 1971 Fund by the shipowner/Skuld Club. One writ relates to limitation of liability and names as defendants the 1971 Fund, the Secretary of State for the Environment, Transport and the Regions and all persons claiming or entitled to compensation as a result of the *Sea Empress* incident. A second writ relates to indemnification of the shipowner and names the 1971 Fund as the only defendant. The third writ, also naming the 1971 Fund as the only defendant, relates to a subrogated claim in respect of compensation payments made by the Skuld Club.

Writ issued in respect of 119 claimants

3.1.5 One hundred and nineteen claimants, all of whom are represented by one firm of loss adjusters, have commenced legal action as co-plaintiffs by serving a single writ which names the shipowner, the Skuld Club and the 1971 Fund as defendants. The loss adjusters have provided a list outlining the nature of each of the claims, which indicates that 78 claims (totalling £415 000) relate only to fees for work carried out by the loss adjusters. Eight of these claims, totalling £29 000, have been settled at a total of £3 240. The remaining 70 claims are currently being reassessed in the light of information recently provided by the loss adjusters.

3.1.8 Of the remaining 41 claimants named on the writ, 40 either did not accept the amounts of compensation originally offered by the Skuld Club and the 1971 Fund, or have failed to provide sufficient information in support of their claims. The remaining claimant on the writ, a shellfish marketing company in Cornwall, had its claim rejected by the Executive Committee at its 49th session on the ground that the claim did not fulfil the criterion of a reasonable degree of proximity (document FUND/EXC.49/12, paragraphs 3.8.9 and 3.8.10).

3.2 Estimate of the total amount of outstanding claims

3.2.1 The Skuld Club and the 1971 Fund are endeavouring to ascertain the amounts claimed in the legal proceedings. Letters have been sent to the claimants or, where appropriate, to their legal representatives requesting further information regarding their claims. So far, only a few claimants have replied to these letters.

3.2.2 The total amount of the outstanding claims has been estimated as follows. Where the amount claimed has been given in the writ, this amount has been used. If no exact amount has been given, the upper limit indicated in the writ, if any, has been used. Where no figure is indicated in the writ, an estimate has been made on the basis of the amount originally claimed less amounts paid, if any, by the Skuld Club and the 1971 Fund.

3.2.3 The table below gives a summary of the situation in respect of outstanding claims, which have been estimated using the method outlined in paragraph 3.2.2 above.

Category	Being assessed	Assessed but not settled
Clean-up	£9 260 000	£5 560 000
Fishing	£365 000	£4 880 000
Tourism	£107 000	£1 520 000
General	£1 802 000	£509 000
Property	£17 000	£333 000
Fees	£496 000	
SUBTOTAL	£12 047 000	£12 802 000
TOTAL		£24 849 000

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 decide on the admissibility of the claim by the fire brigade dealt with in section 2.3.
