



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE -
9th session
Agenda item 3

FUND/EXC.9/2
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INFORMATION ON AND APPROVAL OF
SETTLEMENT OF CLAIMS

Note by the Director

1 Article 26.1(b)(ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the IOPC Fund and take all other steps envisaged in relation to such claims in accordance with Article 18.7 of the Fund Convention.

2 At its ninth session, the Executive Committee intends to devote most of its time to the TANIO incident; the necessary information is contained in document FUND/EXC.9/3. Information with respect to incidents other than the TANIO incident which has become available since the Executive Committee's seventh session in September 1982 is contained in the Annex. For further details on these incidents reference is made to documents FUND/EXC.7/2 and FUND/EXC.7/2/Add.1, which were submitted to the Executive Committee's seventh session.

3 The Executive Committee is invited to take note of the information contained in the Annex.

ANNEX1 TARPENBEK
(United Kingdom, 21 June 1979)

The owner has sued the IOPC Fund in the English High Court of Justice for an amount of £594 357.79 minus the owner's share in the CLC limitation fund for preventive measures taken after the capsizing of the TARPENBEK. In the Statement of Claim it is alleged that the bunker oil spilled immediately after the collision was persistent and that small quantities of persistent cargo oil were spilled during the pumping and uprighting operations on 3, 7, 9 and 15 July 1979. The Statement of Claim does not give evidence for these assertions. The Defence submitted by the IOPC Fund clearly states that the bunker oil was not persistent, that there is no evidence of a spill of persistent oil and that, in the absence of a spill of persistent oil, there is no liability of the IOPC Fund. Investigations into the question of whether there actually was a spill of persistent oil are being made by the IOPC Fund. It is hoped that by the time of the ninth session of the Executive Committee more information will be available.

2 FURENÄS
(Sweden, 3 June 1980)

With respect to the IOPC Fund's share in the amount recovered from the other ship involved in the collision with the FURENÄS, it has now been agreed that the IOPC Fund is entitled to receive a part of this amount. It is expected that payment will soon be made. Indemnification will then also be paid to the shipowner's insurer.

3 JOSE MARTI
(Sweden, 7 January 1981)

3.1 The Director has been informed that in addition to the claim submitted by the Swedish Government amounting to SKr 19 296 000 two private persons have filed claims against the owner for SKr 500 000 and SKr 350 000 respectively. To date no details of these claims are known. The total amount of compensation claimed against the IOPC Fund amounts, therefore, to SKr 20 146 000. However, the total amount payable is likely to be less since, after

examining the documents, the shipowner is suggesting a reduction of SKr50 000 from the Swedish Government's claim, and the private claims have not been assessed at all. The shipowner's liability under the CLC stands now, after a recent devaluation of the Swedish Crown, at about SKr20 079 830. The CLC limitation fund has not yet been established.

3.2 In a pollution incident which occurred in Swedish waters in 1977 (TSEISIS case), which to some extent happened under similar circumstances as the JOSE MARTI incident and which involved the same owner and the same P&I Club, a judgement has now been delivered by the Supreme Court of Sweden stating that the term "navigational aids" as used in Article III.2(c) of the CLC includes maritime charts. The Court rejected a claim by the Swedish Government for compensation of oil pollution damage which was based on the Swedish law implementing the CLC on the basis that the incident was wholly caused by the negligence of the Swedish Government in the exercise of its function of maintaining maritime charts.

3.3 The owner of the JOSE MARTI maintains that, as in the TSEISIS case, the incident was wholly caused by the negligence of the Swedish Government in maintaining navigational aids and that he had, therefore, no liability for the pollution damage caused by the JOSE MARTI (Article III.2(c) of the CLC as implemented in Swedish national law). In his opinion, the incident was solely caused by the fact that the rock on which the ship grounded was not properly marked in the charts. The Swedish Government, however, is of the view that navigational errors by the pilot were the primary, if not the only, reasons for the casualty.

3.4 After consultations with the Swedish lawyer representing the IOPC Fund in this case, the Director has informed the Swedish Government that the IOPC Fund would not accept liability if the owner was relieved of liability on the grounds of Article III.2(c) of the CLC. In such a case the view would be taken that, in accordance with Article 4.3 of the Fund Convention, the IOPC Fund would be wholly exonerated from its obligation to pay compensation,

except for preventive measures which are expressly excluded from the exoneration in that provision. Should the Court, in the proceedings between the Government and the owner, come to the conclusion that the owner had to compensate part of the pollution damage (Article III.3 of the CLC), the remaining part of the damage would have to be borne by the Government and could not be claimed against the IOPC Fund (Article 4.3 of the Fund Convention). In any case, a possible claim of the Swedish Government against the IOPC Fund would depend on the extent to which the owner will be held liable under the CLC, if at all, so that no negotiations between the IOPC Fund and the Swedish Government on the payment of compensation by the IOPC Fund could be held before a final judgement in the proceedings between shipowner and Government has been rendered.

4 SUMA MARU NO 11
(Japan, 21 November 1981)

4.1 The Japanese P&I Club, as the shipowner's insurer, has informed the IOPC Fund that the District Court of Fukuoka has now taken up the petition for the limitation of the owner's liability. Limitation proceedings are expected to commence soon. This decision of the District Court of Fukuoka has helped to overcome the deadlock which appeared to have arisen as a result of an interpretation of the Japanese oil pollution law which did not allow the shipowner to establish the CLC limitation fund if it was he alone who had a claim for pollution damage.

4.2 Compensation will be paid after the establishment of the limitation fund. As set out in paragraph 10.2 of the Annex to document FUND/EXC.7/2, the pollution damage amounts to ¥13 823 197 (£38 000) while the CLC liability is ¥7 396 340 (£20 500). There is no possibility of breaking the shipowner's limitation.

5 ONDINA
(Federal Republic of Germany, 3 March 1982)

5.1 The UK P&I Club, as the shipowner's insurer, has submitted invoices to the IOPC Fund amounting to DM20 720 154 (£5.6 million). These invoices are for clean-up measures which, by order of the City of Hamburg, the UK P&I Club undertook after the incident.

The claim has not yet been submitted in a proper manner as discussed with the claimant in August 1982 and some of the queries of the IOPC Fund with respect to the invoices have not yet been answered.

5.2 In addition to the P&I Club, the City of Hamburg has submitted a claim to the IOPC Fund for DM254 604 (£69 000) mainly for the use of booms and for surveillance. This claim has been rejected because the hire of the booms in question and the surveillance actions were considered not to be reasonable.

5.3 The Director has investigated the possibility of breaking the owner's right to limit his liability but it has not been possible to establish any facts on which an action against the owner could be based.

6 SHIOTA MARU NO 2
(Japan, 31 March 1982)

The pollution damage caused by about 20 tonnes of heavy fuel oil which spilled as a result of the grounding of the SHIOTA MARU NO 2 has been assessed by the IOPC Fund's surveyors as follows:

| | ¥ | £ |
|---|-------------------|------------------|
| Japanese Maritime Disaster Prevention Center (JMDPC) clean-up | 47 786 708 | (132 373) |
| Maritime Safety Agency (MSA) clean-up | 2 563 305 | (7 100) |
| Shipowner's clean-up | 300 000 | (831) |
| Fishery damage | 26 750 000 | (74 100) |
| TOTAL | <u>77 400 013</u> | <u>(214 404)</u> |

The shipowner's liability is ¥6 304 300 (£17 463). Legal and surveyors' fees are ¥7 848 500 (£21 741).

The fishery damage was paid in early January 1983. The clean-up costs plus the IOPC Fund's share in the legal and surveyors' fees (¥7 209 632 or £19 971), minus the CLC liability, will be paid by the end of March 1983.

7 FUKUTOKU MARU NO 8
(Japan, 3 April 1982)

7.1 The collision of the FUKUTOKU MARU NO 8 with the KOSHU MARU resulted in the release of about 850 tonnes of heavy oil and caused the following pollution damage:

| | ¥ | £ |
|----------------------------|--------------------|--------------------|
| Third party clean-up costs | 144 575 383 | (400 000) |
| Shipowner's clean-up costs | 6 688 500 | (18 500) |
| Fishery damage | 233 312 312 | (646 700) |
| TOTAL | <u>384 576 195</u> | <u>(1 065 200)</u> |

Clean-up costs and fishery damage were paid in early January 1983. Indemnification will be paid after the termination of the limitation proceedings.

7.2 The liability under the CLC amounts to ¥20 844 440 (£57 800). There appears to be no possibility of breaking the owner's limitation since the incident was caused by navigational errors (no setting of lights while sailing at night) of a generally competent crew. The possibility of taking recourse against the other ship involved in the collision is still being investigated.

8 KIFUKU MARU NO 35
(Japan, 1 December 1982)

The Japanese tanker KIFUKU MARU NO 35 (107 GRT), carrying 260 tonnes of heavy oil, sank at the port of Ishinomaki, Japan, by taking water into her engine room while moored to a wharf overnight. The owner's clean-up costs are calculated at ¥3 801 851 (£10 530). No other claims are likely to be made. Since the ship's CLC liability is ¥4 271 560 (£11 830), it is possible that the IOPC Fund will have to pay only a part of the indemnification under Article 5 of the Fund Convention.

9 RYUEI MARU NO 8
(Japan, 3 February 1983)

9.1 The Japanese tanker RYUEI MARU NO 8 (499 GRT), laden with approximately 800 tonnes of creosote oil, ran aground off Cape Shiriyazaki, Aomori Prefecture, Japan on 3 February 1983. As a result of this grounding, 486 tonnes of creosote oil and 23 tonnes of bunker oil were released into the sea.

9.2 It was found that the creosote oil, the specific gravity of which is higher than 1.0, remained on the rocky sea bottom in the vicinity of the incident. The site of the incident is a good fishing area and a large number of shells and seaweeds were found to have been affected by the oil. The removal of the creosote oil from the sea bottom has been undertaken by a salvage company. Fishermen have not yet submitted claims.

9.3 With regard to the question of whether the creosote oil falls within the definition of "persistent oil" as defined in the CLC and the Fund Convention, a sample of the spilt oil is being analysed by experts.

9.4 The ship's liability under the CLC is ¥20 460 340 (£56 676).

10 EISHIN MARU
(Japan, 15 February 1983)

10.1 The Japanese tanker EISHIN MARU (99.74 GRT) leaked heavy oil "B" whilst loading the oil from a shore tank at Yokohama, Japan, on 15 February 1983. The clean-up of the floating oil has been completed. Oil already loaded was immediately pumped back into a shore tank in order to avoid further leakage from the vessel.

10.2 The cause of the spill was a rupture in the starboard shell plating of the vessel, below sea level. The rupture is believed to have been suffered when the vessel made contact with the lower corner of the pier.

10.3 Clean-up costs for spilt oil are not considerable, but the disposal of the oil contaminated by sea water may exceed ¥10 million (£27 700).
