



INCIDENTS INVOLVING THE 1992 FUND

BALTIC CARRIER

Note by the Director

Summary:	As a result of the <i>Baltic Carrier's</i> collision with the <i>Tern</i> , about 230 tonnes of the spilled cargo from the <i>Baltic Carrier</i> entered the damaged forepeak tank of the <i>Tern</i> , some of which was subsequently spilled from that vessel in the ports of Rostock (Germany) and Ventspills (Latvia).
Action to be taken:	a) information to be noted; and b) decide whether the spills in Rostock and Ventspills fall within the scope of application of the 1992 Conventions.

1 The incident

- 1.1 As reported in document 92FUND/EXC.13/4, the *Baltic Carrier* was carrying some 30 000 tonnes of heavy fuel oil when on 29 March 2001 it collided with the *Tern*, a sugar-laden bulk carrier, some 30 miles north-east of Rostock (Germany). The collision caused a hole approximately 20m² in one of the *Baltic Carrier's* cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.
- 1.2 The *Baltic Carrier* remained at anchor near the collision site during the first week in April until lightering operations of the undamaged cargo tanks were completed. The vessel was then escorted to a shipyard in Szczecin (Poland) for repair.
- 1.3 The *Tern* sustained severe damage to its bow above and below the water line leading to the flooding of the vessel's forepeak tank. Some of the cargo from the *Baltic Carrier* spilled on to the bow of the *Tern* and also entered the vessel's forepeak tank. The *Tern* proceeded to the port of Rostock on the day of the incident where it was discovered that about 230 tonnes of cargo from the *Baltic Carrier* was trapped in the *Tern's* forepeak tank. During the *Tern's* stay in Rostock its

bow was cleaned and most of the oil in the forepeak tank was removed. A small oil spill occurred in the port of Rostock during these operations. The cause of this spill is not known.

- 1.4 In order to get Class' approval for the *Tern* to proceed to its discharge port of Ventspills (Latvia), about 800 tonnes of cargo was redistributed to trim the vessel by the stern. On 9 April the *Tern* left Rostock, escorted by a tug, arriving at Ventspills on 12 April. It was estimated that approximately 20 – 30 tonnes of oil was left in the vessel's forepeak tank on departure from Rostock.
- 1.5 The *Tern* discharged its cargo of sugar at Ventspills from 5 to 17 May 2001, during which a further oil spillage from the forepeak tank occurred. The cause of this spill is not known.
- 1.6 The 1992 Fund was only informed of the spills in Rostock and Ventspills on 15 June 2001.
- 1.7 Both the *Baltic Carrier* and the *Tern* were entered in Assuranceforeningen Gard (the Gard Club).
- 1.8 Experts from the International Tanker Owners Pollution Federation Ltd (ITOPF) attended on site in both Denmark and Latvia on behalf of the Gard Club and the 1992 Fund.

2 Clean-up operations in Rostock and Ventspills

- 2.1 Some clean-up operations and preventive measures were undertaken in Rostock.
- 2.2 A local contractor was engaged by the Gard Club to undertake clean-up operations in Ventspills and to remove the remaining *Baltic Carrier* oil from the forepeak tank. Preliminary reports have indicated that some 95 tonnes of oil was removed from the damaged tank.

3 Claims for compensation

- 3.1 There will be claims for clean-up operations and other preventive measures in both Rostock and Ventspills. Claims are anticipated from fishermen and the owners of vessels whose hulls were oiled in the port of Ventspills.
- 3.2 It is not yet possible to make an evaluation of the total amount of the claims for compensation.

4 Scope of application of the 1992 Conventions

- 4.1 The *Tern* is a bulk carrier and is therefore not a 'ship' for the purpose of the 1992 Civil Liability Convention. The question arises as to whether the spill of *Baltic Carrier* oil from the *Tern* falls within the scope of application of the 1992 Conventions or, in other words, how far the liability of the ship which originally carried the oil reaches.
- 4.2 Under Article III.1 of the 1992 Civil Liability Convention the owner of the ship carrying the oil is liable for pollution damage caused by his ship as a result of an incident. 'Pollution damage' is defined as loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship (Article I.6). 'Incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage (Article I.7).
- 4.3 The oil spilled in Rostock and Ventspills originated from the *Baltic Carrier* and caused damage by contamination outside that ship. Had the oil from the *Baltic Carrier* which entered the *Tern* spilled on to the sea at the collision point shortly after the collision, there cannot in the Director's view be any doubt that the 1992 Conventions would have applied to that spill.
- 4.4 The *Tern* however was moved from the collision point to Rostock where some measures were taken (shifting of its cargo, cleaning of the bow, removal of the major part of the oil in the forepeak) to enable the ship, after having obtained Class' approval, to proceed to Ventspills for

discharge of its cargo. The question is whether the fact that the *Tern* was moved with the *Baltic Carrier* oil in the forepeak tank before this oil spilled into the sea at Rostock should imply that this spill was not caused by a series of occurrences having the same origin, ie the collision. Since it was necessary and prudent to bring the *Tern* to Rostock for inspection, the Director considers that there is a sufficiently close link of causation between the collision and the pollution damage caused in Rostock. The Director takes the view therefore that this spill falls within the scope of the 1992 Conventions.

- 4.5 As regards the spill in Ventspills, the situation is, in the Director's view, different. It was not a foreseeable consequence of the collision that the oil originating from the *Baltic Carrier* would cause pollution damage in Latvia. It was known at the time of departure from Rostock that there was *Baltic Carrier* oil remaining on board the *Tern*. The voyage from Rostock would, in the Director's view, constitute an intervening factor breaking the link of causation between the collision and the pollution damage in Ventspills, and the spill in Ventspills would therefore constitute a different incident caused by an event, the origin of which was not the collision, nor an occurrence having its origin in the collision, but the failure to remove the oil from the *Tern*. The Director considers therefore that this latter oil spill does not fall within the scope of the 1992 Conventions. As a result, the liability for the pollution damage in Ventspills would not fall on the owner of the *Baltic Carrier* but would have to be determined under common law.

5 Recourse actions

Should the Executive Committee decide that the spills in Rostock and Ventspills, or one of them, fall within the scope of the 1992 Conventions, the Director would investigate whether there are grounds for the 1992 Fund to take recourse actions against any liable third party.

6 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 consider whether the pollution damage caused in Rostock and Latvia falls within the scope of application of the 1992 Conventions.
-