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OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
18th session
Agenda item 3

92FUND/EXC.18/10
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INCIDENTS INVOLVING THE 1992 FUND

BALTIC CARRIER

Note by the Director

Summary:

The tanker *Baltic Carrier* collided with the bulk carrier *Tern* in the Baltic Sea off the coast of Germany resulting in an escape of some 2 500 tonnes of heavy fuel oil. The oil affected several of the Danish islands. Claims for pollution damage have been settled for a total of DKr 55 million (£4.7 million). Further claims totalling DKr 43 million (£3.6 million) are being assessed. It is not yet known whether the total amount of established claims will exceed the limitation amount applicable to the *Baltic Carrier* under the 1992 Civil Liability Convention.

Action to be taken:

To give the Director instructions in respect of this incident

1 The incident

- 1.1 The *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, was carrying some 30 000 tonnes of heavy fuel oil when on 29 March 2001 it collided with the *Tern* (20 362 GT), a sugar-laden bulk carrier registered in Cyprus, some 30 miles north-east of Rostock (Germany). The collision caused a hole of approximately 20m² in one of *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 spilled oil drifted from the collision point and towards Danish coastal waters, polluting the shorelines of several islands, including Falster, Farø, Bogø and Møn.
- 1.4 Both the *Baltic Carrier* and the *Tern* were entered in Assuranceforeningen Gard (the Gard Club).

2 Clean-up operations in Denmark

- 2.1 The Danish Coast Guard responded to the spill with seven of its oil response vessels. The Swedish and German authorities despatched three and two response vessels respectively, under the terms of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention).
- 2.2 The offshore response was terminated on 2 April 2001, when it was established that no more floating oil could be found in open water areas accessible to large vessels.
- 2.3 When the emergency response phase was terminated, responsibility for cleaning was transferred to the municipalities concerned.
- 2.4 In line with Danish policy, most of the collected oil and oily debris was disposed of by incineration.
- 2.5 In July 2002, whilst renovation work was being carried out on a causeway between Bogø and Møn, it was discovered that oil that had become trapped within the underlying boulders of the causeway was being released into the sea. The local authorities and the contractors involved in the renovation work considered two options for dealing with the problem. The first option was to continue with the renovation work as planned, recognising that there would be interruptions for clean-up works to be undertaken when oil was released. The second option, which was the one eventually adopted, was to leave the oily boulders undisturbed and to lay fresh material on top. The contractor has estimated that this would lead to an increase in the costs of the renovation project by some DKr 1.8 million (£154 000).

3 Oil pollution in Sweden

At the Executive Committee's 13th session in June 2001, the Swedish observer delegation stated that oil thought to have originated from the *Baltic Carrier* had been found on the south-west coast of Sweden and that clean-up operations had been undertaken by the Swedish Coastguard to remove the oil. It is understood, however, that the Swedish Coastguard does not intend to claim compensation in respect of the clean-up operations.

4 Oil pollution in Rostock and Ventspils

- 4.1 Following the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern's* forepeak tank. During the latter vessel'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 Rostock. Clean-up operations were undertaken by the local fire brigade at a cost of DM 600 (£190). It is understood that the German authorities do not intend to carry out an investigation into the events leading to the spill.
- 4.2 The *Tern* subsequently proceeded to Ventspils (Latvia) to discharge its cargo, and further spillage of *Baltic Carrier* oil occurred in Ventspils. A local contractor was engaged by the Gard Club on behalf of the owner of the *Tern* to undertake clean-up operations in Ventspils and to remove the remaining *Baltic Carrier* oil from the forepeak tank. About 95 tonnes of oil was removed from the damaged tank. The Gard Club has received claims for pollution damage from the Ventspils Port Authority as well as from the owner of the terminal alongside which the spill occurred, the Marine Environment Organisation, a yacht harbour, fishermen and the owners of other vessels that were in the port at the time. It is understood that the Gard Club has settled these claims on best possible terms.
- 4.3 The Gard Club has not indicated whether it intends to maintain that the claims referred to in paragraph 4.2 fall within the scope of application of the 1992 Civil Liability Convention as regards the *Baltic Carrier* incident.

- 4.4 At its 13th session held in June 2001 the Executive Committee considered the question as to whether the spills of *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions or, in other words, how far the liability of the ship originally carrying the oil reached. The *Tern* was a bulk carrier and was therefore not a 'ship' for the purpose of the 1992 Civil Liability Convention.
- 4.5 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), and '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).
- 4.6 The oil spilled in Rostock and Ventspils originated from the *Baltic Carrier* and caused damage by contamination outside that ship. In the Director's view 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 would not have been any doubt that the 1992 Conventions would have applied to that spill.
- 4.7 The Executive Committee considered the question of whether the fact that the *Tern* had been 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. The Committee noted that since it had been necessary and prudent to bring the *Tern* to Rostock for inspection, the Director considered that there was a sufficiently close link of causation between the collision and the pollution damage caused in Rostock and that this spill fell within the scope of the 1992 Conventions.
- 4.8 The Committee noted that as regards the spill in Ventspils, the situation was, in the Director's view, different, since it had not been a foreseeable consequence of the collision that the oil originating from the *Baltic Carrier* would cause pollution damage in Latvia. It was noted that it was known at the time of departure from Rostock that there was *Baltic Carrier* oil remaining on board the *Tern*. The Committee noted the Director's view that the voyage from Rostock to Ventspils constituted an intervening factor breaking the link of causation between the collision and the pollution damage in Ventspils, and that the spill in Ventspils therefore constituted 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 Committee noted that the Director considered therefore that this latter oil spill did not fall within the scope of the 1992 Conventions and that the liability for the pollution damage in Ventspils would not fall on the owner of the *Baltic Carrier* but would have to be determined under common law.
- 4.9 A number of delegations took the view that it was not foreseeable that the collision between the *Baltic Carrier* and the *Tern* would lead to pollution in Ventspils and that the *Tern's* voyage from Rostock to Ventspils constituted an intervening factor which broke the link of causation between the collision and the pollution damage in Ventspils.
- 4.10 Other delegations considered that before any decision could be taken on the scope of application of the 1992 Conventions to the spills in Rostock and Ventspils, it would be necessary to establish the precise chain of events that led to the spills.
- 4.11 At its 14th session held in October 2001, the Executive Committee considered again the question of whether the spills of the *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions.
- 4.12 As regards the spill in Rostock, the Committee noted that the costs for clean-up were insignificant, that the German authorities would not present any claim for compensation and that the question of whether the spill of *Baltic Carrier* oil from the *Tern* in Rostock was covered by the 1992 Conventions was academic. It was also noted that the German authorities did not intend

to carry out any investigation into the circumstances surrounding the spill in Rostock. The Committee therefore decided not to give the matter any further consideration.

- 4.13 With respect to the spill of *Baltic Carrier* oil from the *Tern* in Ventspils, the Latvian delegation stated that the authorities in Latvia were still conducting their own investigations into the cause of the incident in Ventspils and requested the Committee to defer making a decision as to whether this incident was covered by the 1992 Conventions until these investigations had been completed.
- 4.14 The Committee instructed the Director to continue his investigations recognising that if all claims arising from the oil spill in Ventspils were settled by the shipowner without any involvement of the 1992 Fund, the question of the applicability of the 1992 Conventions to the spill in Ventspils might also become academic (document 92FUND/EXC.14/12, paragraph 3.7.18).
- 4.15 It is possible that, if the total amount paid by the Gard Club in compensation (including payments in respect of pollution damage in Ventspils) were to exceed the limitation amount applicable to the *Baltic Carrier* under the 1992 Civil Liability Conventions, the Club will seek reimbursement from the 1992 Fund of the sum paid in excess of that amount.
- 4.16 The Director has been unable to obtain any further information regarding the cause of the spill in Ventspils. He considers, however, that until more details are available as to the events leading to the spill, and until the Gard Club decides whether or not to maintain that its subrogated claims for pollution damage in Ventspils should be paid from the limitation amount applicable to the *Baltic Carrier*, it is premature for the Executive Committee to take a decision as to whether the spill falls within the scope of application of the 1992 Conventions.

5 Claims for compensation

- 5.1 At its 13th session the Executive Committee authorised the Director to make final settlements on behalf of the 1992 Fund of all claims for pollution damage in Sweden and Denmark arising from the *Baltic Carrier* (document 92FUND/EXC.13/7, paragraph 3.3.19).
- 5.2 Experts have been appointed by the Gard Club and the 1992 Fund to assess the claims for compensation. After the experts have assessed the claims, the experts' reports are submitted to the Gard Club and the 1992 Fund for their consideration and approval.
- 5.3 The table below summarises the claims that have been settled by the Gard Club.

Category of claim	Claimed amount DKr	Settlement amount DKr
On shore clean up	15.9 million	15.9 million
Oil disposal	17.4 million	17.4 million
Environmental monitoring	258 000	258 000
Fish farms	33.9 million	19.7 million
Miscellaneous small claims (property damage, economic loss)	2.7 million	1.6 million
Total	70.2 million (£6.1 million)	54.9 million (£4.7 million)

- 5.4 Claims totalling DKr 42.6 million (£3.6 million) in respect of the costs of clean up operations at sea and on shore are being assessed.
- 5.5 Further claims are expected, for example a claim in respect of the pollution of the causeway referred to in paragraph 2.5 above. It is not yet possible to make an evaluation of the total amount

of the established claims for compensation. It is therefore not possible to determine whether the limitation amount applicable to the *Baltic Carrier* (see section 6 below) will be exceeded and whether the 1992 Fund will be called upon to pay compensation.

6 Limitation of liability

6.1 The shipowner has not yet commenced limitation proceedings.

6.2 The limitation amount applicable to the *Baltic Carrier* under the 1992 Civil Liability Convention is estimated at Dkr 118 million (£10.1 million).

7 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 give the Director such instructions in respect of this incident as it may consider appropriate.
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