



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
18th session
Agenda item 3

92FUND/EXC.18/12
26 September 2002
Original: ENGLISH

INCIDENTS INVOLVING THE 1992 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are reported regarding the following incidents: <i>Mary Anne</i> , <i>Dolly</i> and <i>Neptank VII</i> .
Action to be taken:	Information to be noted.

1 *Mary Anne*

(Philippines, 22 July 1999)

The incident

- 1.1 The Philippines-registered sea-going, self-propelled barge *Mary Anne* (465 GT), en route from Subic Bay to Manila (Philippines), became swamped during strong winds and heavy seas and sank in approximately 60 metres of water off the port of Mariveles at the entrance to Manila Bay. It was reported that the barge was carrying a cargo of 711 tonnes of intermediate fuel oil as well as some 2.5 tonnes of gas oil bunkers. The wreck leaked a small quantity of oil, some of which stranded on shorelines in the vicinity of Mariveles Harbour and on two islands in the entrance to Manila Bay.
- 1.2 The *Mary Anne* was insured by the Terra Nova Insurance Company Limited (Terra Nova), a conventional insurance company that covers P & I risks on the basis of fixed premiums.

Clean-up operations and other preventive measures

- 1.3 The clean-up operations were undertaken under the direction of the Philippines Coast Guard. The shipowner appointed a local salvage company to provide oil spill response services. The offshore

response was based upon dispersant spraying from tugs. Shoreline clean-up involved the manual collection of oil and oily debris by local labour recruited by the municipalities.

- 1.4 Terra Nova contracted an international salvage company, to work in collaboration with a local salvor, to locate the wreck and plug any leaks prior to removing the oil remaining on board. The operations were initially hampered by bad weather, but diving surveys of the wreck and the sealing of vents and other openings were completed by the end of August. Diving inspections showed that there was no remaining oil in any of the cargo tanks. The inspections also showed that the bunker tanks were free of oil.

Claims for compensation

- 1.5 Terra Nova has incurred expenditure of approximately US\$2.5 million (£1.6 million) in respect of the oil removal contract and the clean-up operations.
- 1.6 A local salvage and towing company presented the shipowner with a claim for US\$1.1 million (£710 000) in respect of clean-up operations. This claim became the subject of legal proceedings, but in June 2001 Terra Nova settled the claim out of court for US\$500 000 (£325 000).
- 1.7 Terra Nova did not consult the 1992 Fund on the settlement of the claims.
- 1.8 The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.6 million). It is therefore unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention. However, Terra Nova informed the 1992 Fund that the shipowner was in breach of the insurance policy in respect of the vessel on the grounds that the vessel was operated recklessly and that the crew was grossly incompetent. In particular, Terra Nova maintained that on the basis of diving surveys of the wreck there was no evidence of damage to the vessel's hull which could have caused the sinking, the engine room skylights were open and had no glass in them and the engine room and pump room had been modified in such a way that there was no watertight bulkhead between the two spaces. Terra Nova also informed the 1992 Fund that it might request the shipowner and the 1992 Fund to reimburse Terra Nova the amounts it had paid to claimants.
- 1.9 Terra Nova requested the 1992 Fund to endorse its action and recognise its potential claim against the Fund. The Director informed Terra Nova that the Fund neither endorsed the action nor recognised any potential claim by Terra Nova for reimbursement against the Fund, since the total amount of the claims fell well below the limitation amount applicable to the *Mary Anne*.
- 1.10 At its 9th session held in October 2000 the Executive Committee endorsed the Director's opinion that any claim by Terra Nova for reimbursement on the grounds of the shipowner having been in breach of the insurance policy had to be made against the shipowner, since the total amount of the claims paid fell well below the limitation amount applicable to the *Mary Anne*. The Committee noted that the legal situation might be more complicated as regards claims that had not yet been paid and that the Committee might have to consider this issue at a future session (document 92FUND/EXC.9/12, paragraph 3.4.9).
- 1.11 In October 2001 the 1992 Fund received a claim for PPs 1.8 million (£22 000) from a lawyer in the Philippines representing a chemical supplier who had provided a quantity of dispersant to the shipowner for use in the clean-up operations. It was stated that the chemical supplier had been unable to obtain compensation from the shipowner and that Terra Nova had refused to settle the claim.
- 1.12 Under Article 4.1(b) of the 1992 Fund Convention claimants have to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund. At its 14th session in October 2001 the Executive Committee decided that the claimant should be informed that he should pursue his claim against the shipowner and/or Terra Nova (document 71FUND/EXC.14/12, paragraph 3.9.7). The Director informed the claimant's lawyer accordingly in October 2001.

Legal actions

- 1.13 Under Article 6 of the 1992 Fund Convention, rights to compensation under Article 4 shall be extinguished unless an action is brought thereunder or a notification of an action against the shipowner or his insurer has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. The third anniversary of the *Mary Anne* incident was on 22 July 2002, and the 1992 Fund wrote to the claimant's lawyer in early July 2002 explaining the time bar provisions and the steps that needed to be taken to protect the claimants rights against the shipowner/insurer and the 1992 Fund.
- 1.14 In September 2002 Terra Nova informed the 1992 Fund that proceedings had been commenced in the Makarti City Court against the Fund by Terra Nova and two other parties, one of whom is the claimant referred to in paragraph 1.13 above.
- 1.15 The 1992 Fund has not been served with any action in the Philippines, but has sought clarification from Terra Nova on the identity of the claimants, the claimed amounts and the bases of the claims.
- 1.16 Terra Nova has informed the 1992 Fund that it intends to abandon its action against the Fund without prejudice to its position that it was entitled to claim recovery from the Fund.

2 *Dolly*

(Caribbean, 5 November 1999)

The incident

- 2.1 The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen (a very persistent hydrocarbon product) when it sank on 5 November 1999 in 20 metres depth in Robert Bay, Martinique. So far no cargo has escaped.
- 2.2 There is a national park, a coral reef and mariculture near the grounding site, and artisanal fishing is carried out in the area. There are fears that fishing and mariculture would be affected if bitumen were to escape.
- 2.3 The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship did not have any liability insurance. The owner is a company in St Lucia.
- 2.4 The shipowner was ordered by the authorities to remove the wreck by 7 December 1999 but he did not comply with the order, probably due to lack of financial resources.

The definition of 'ship'

- 2.5 At its 11th session, held in January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided the 1992 Fund, including the original drawings and a sketch showing modifications that were subsequently made to the vessel.
- 2.6 The Committee noted that the *Dolly* had been built in 1951 as a general cargo vessel and had been listed as such in Lloyds Register (1998-99). It was further noted that at some later date three tanks were installed in the hold and the opening of the original hatch was closed with steel plates. The Committee also noted that the sketches available to the 1992 Fund had shown that the tanks were not part of the ship's structure, but were secured within the ship's hold with chains and surrounded with insulation material. The Committee also took note of the 1992 Fund's experts having expressed the opinion, and the Director having concurred, that the *Dolly* had been adapted for the carriage of oil in bulk as cargo and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention.

- 2.7 The Committee endorsed the Director's view that the *Dolly* fell within the definition of 'ship' as laid down in the 1992 Civil Liability Convention (document 92FUND/EXC.11/6, paragraph 4.2.5).

Measures to prevent pollution

- 2.8 Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by bitumen. These companies submitted their proposals on the basis of diving inspections of the wreck carried out in October and November 2000. The French authorities provided the 1992 Fund with copies of the proposals.
- 2.9 Two of the companies proposed removing the bitumen tanks intact while leaving the wreck in its current position. Both companies estimated the cost of such an operation to be in the region of US\$1.5 million (£970 000). The third company proposed righting the wreck and refloating it with its cargo on board, following which the bitumen would then be removed and the wreck scuttled in deep water. The cost of this method was estimated at US\$950 000 (£610 000).
- 2.10 The Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions (document 92FUND/EXC.11/6, paragraph 4.2.11).
- 2.11 One delegation stated that, whilst the early involvement of the 1992 Fund in any proposals for preventive measures was to be welcomed, it was important for the sake of consistency that the Fund did not take decisions as to what method should be used and which contractor should be engaged. It was also important in that delegation's view that the 1992 Fund did not guarantee to pay the costs of any such operations, but that these costs were presented as a claim for compensation, which would be subject to an assessment as to admissibility on the basis of the criteria laid down by the Assembly and Executive Committee.
- 2.12 The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen. The Committee also instructed the Director to investigate the financial position of the shipowner.
- 2.13 The 1992 Fund's experts examined the proposed methods and expressed the view that the third company's proposal was preferable on both technical and cost grounds. The French authorities have indicated that they favour refloating the wreck prior to removing the cargo, and then dismantling the wreck on shore, but that they will consider other options.
- 2.14 In July 2001 the Director informed the French Government of the Fund's expert's opinion. The Director also stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.
- 2.15 In September 2002 the French authorities informed the 1992 Fund that in view of the anticipated costs of undertaking the operations, tenders were being sought through the Official Journal of the European Communities. The authorities further indicated that as a result of the delays necessitated by the tendering process, during which divers have made regular checks on the condition of the wreck, the operations are expected to commence towards the end of 2002 after the hurricane season.

3 Neptank VII

(Singapore, 12 June 2002)

The incident

- 3.1 On 12 June 2002 the bunker tanker *Neptank VII* (1 937 GT), registered in Singapore, carrying a cargo of some 3 100 tonnes of heavy fuel oil and 200 tonnes of marine diesel oil, collided with the Thai-registered general cargo ship *Hermion* (9 580 GT) near Sentosa Island in the Singapore Strait, within the port of Singapore. The collision resulted in a hole on the port side shell plating of the *Neptank VII's* aftermost cargo tank. It is estimated that about 300 tonnes of heavy fuel oil escaped from the tank.
- 3.2 The shipowner and the Maritime and Port Authority of Singapore mobilised anti-pollution craft to combat the spill. The oil spill response, which primarily involved the application of dispersants and the deployment of booms to contain the oil, was terminated on 15 June 2002 when it was established that the remaining oil at sea did not pose a threat to the Singaporean coastline. No oiling of shorelines occurred in Singapore.
- 3.3 A small stretch of shoreline in Johore, Malaysia was contaminated with oil.
- 3.4 The *Neptank VII* was entered with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg).

Limitation of liability

- 3.5 Singapore is a Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 3.6 The limitation amount applicable to the *Neptank VII* under the 1992 Civil Liability Convention is 3 million SDR (£2.6 million).
- 3.7 Malaysia is a Party to the 1969 Civil Liability Convention, and although it was previously a Party to the 1971 Fund Convention, that Convention does not apply to this incident since it occurred after the 1971 Fund Convention ceased to be in force on 24 May 2002. The limitation amount applicable to the *Neptank VII* under the 1969 Civil Liability Convention is approximately SDR 144 00 (£120 000).

Claims for compensation

- 3.8 Claims have been submitted to the shipowner and his insurer in respect of costs for clean-up undertaken in Singapore, but these costs are well below the limitation amount applicable to the ship under the 1992 Civil Liability Convention. It is therefore very unlikely that the 1992 Fund will be called upon to make compensation payments.
- 3.9 It is understood that claims in respect of clean-up costs and damage to fisheries in Malaysia have been submitted to the shipowner and his insurer.

4 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.
