



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

EXECUTIVE COMMITTEE
20th session
Agenda item 3

92FUND/EXC.20/2
19 December 2002
Original: ENGLISH

ADMINISTRATIVE COUNCIL
10th session
Agenda item 2

71FUND/AC.10/3

INCIDENTS INVOLVING THE 1971/1992 FUNDS

NAKHODKA

Settlement Agreement

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| Summary: | An Agreement between the IOPC Funds and the owner of the <i>Nakhodka</i> and his insurer on a global settlement of all outstanding issues was signed on 28 October 2002. As a result of the agreement the insurer reimbursed the Funds ¥5 230 million (£27.3 million ^{<1>}) in respect of the Funds' compensation payments and £3.6 million in respect of the insurer's share of the joint costs. The IOPC Funds have withdrawn their recourse actions against the shipowner, his insurer and other parties. All claims have been settled and paid in full. |
| Action to be taken: | Information to be noted. |

1 Introduction

- 1.1 The *Nakhodka* incident (Japan, 2 January 1997) resulted in claims totalling ¥36 045 million (£188 million).
- 1.2 In accordance with a decision by the 1992 Fund Assembly the total amount available under the 1971 and 1992 Fund Conventions, ie 135 million Special Drawing Rights (SDR), was determined to be ¥23 164 515 000 (£121million).
- 1.3 In view of the total amount of the claims the governing bodies had decided to limit the IOPC Funds' payments to 80% of the amount of the damage actually suffered by the individual claimant.
- 1.4 All the claims were finally settled at a total of ¥25 448 965 207 (£133 million).

<1> In this document, conversion of amounts in Yen has been made on the basis of the rate of exchange as at £1= ¥ 191.65, except in respect of amounts paid where conversion has been made at the rate of the date of payment.

2 Legal actions in the Japanese Courts

- 2.1 Pursuant to the governing bodies' decisions, the IOPC Funds brought legal actions in the Fukui District Court against the owner of the *Nakhodka* (Prisco Traffic Limited), Prisco's parent company (Primorsk Shipping Corporation), the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club) and the Russian Maritime Register of Shipping, to recover any amounts paid by the Funds in compensation.
- 2.2 The Japanese Government and the Japan Maritime Disaster Prevention Centre (JMDPC) brought legal actions in the Tokyo District Court against Prisco and the UK Club in respect of their claims that had not been settled and in respect of the unpaid amounts of their settled claims. A number of other claimants took legal actions in the Fukui District Court to recover the unpaid amounts of their claims.
- 2.3 Prisco and the UK Club brought legal actions in the Fukui District Court against the 1971 and 1992 Funds for ¥537 million (£2.8 million) in respect of their subrogated rights relating to the payments made by them.

3 Global solution

- 3.1 At their April/May 2002 sessions, the governing bodies approved the following proposal for a global settlement made by the UK Club:
- 1 The compensation payments would be shared between the UK Club and the IOPC Funds on a 42:58 basis in respect of all settled claims.
 - 2 The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims.
 - 3 The UK Club would pay the 20% balance due to all claimants.
 - 4 The UK Club would reimburse the IOPC Funds approximately ¥5 200 million (£27 million), this being the amount payable by the Club to the Funds after payment by the Club of the 20% balance due to claimants.
 - 5 The joint costs incurred by the UK Club and the IOPC Funds would also be apportioned between them on a 42:58 basis.
 - 6 All legal actions arising from the incident would cease.
 - 7 The IOPC Funds, Prisco Traffic Limited, Primorsk Shipping Corporation and the UK Club should each bear their own legal costs.
- 3.2 The governing bodies authorised the Director to conclude a Settlement Agreement provided it contained the elements set out in paragraph 3.1 above and to agree with the other parties on the details of such an agreement (documents 92FUND/EXC.16/6, paragraph 3.1.36 and 71FUND/AC.7/A/ES.9/14, paragraph 8.4.36). The governing bodies further decided that the IOPC Funds should withdraw their actions against the Russian Maritime Register of Shipping.
- 3.3 The Settlement Agreement between the IOPC Funds, on the one hand, and Prisco Traffic Limited and the UK Club, on the other, was signed on 28 October 2002. The Agreement is reproduced at the Annex.
- 3.4 In accordance with the Agreement, on 31 October 2002 the UK Club reimbursed the IOPC Funds ¥5 229 812 901 million (£27.3 million) in respect of the compensation payments made by the Funds and £3.6 million in respect of the Club's share of the joint costs.

- 3.5 The UK Club has also paid the 20% balance of settled claims of the compensation to all claimants and all claimants have therefore been fully compensated. As a result, all claimants have withdrawn their court actions. The legal actions taken in the Fukui District Court by the IOPC Funds, Prisco Traffic Limited and the UK Club, as well as the IOPC Funds' actions against Primorsk Shipping Corporation and the Russian Register of Shipping, were withdrawn on 9 December 2002.
- 3.6 Whilst Primorsk Shipping Corporation and the Russian Maritime Register of Shipping were not parties to the Agreement, they undertook not to pursue any claims for legal costs against the IOPC Funds.

4 Distribution between the 1971 and 1992 Funds of the amount recovered on the basis of the global settlement

- 4.1 The governing bodies decided at their October 2002 sessions that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits. They also decided that all costs borne by the Funds should be apportioned between the two Funds on the same basis (document 92FUND/EXC.18/14, paragraph 3.2.23 and 71FUND/AC.9/20, paragraph 15.6.23).
- 4.2 The distribution of the amount recovered from the UK Club, ¥5 229 812 901 (£27 288 353), has been made accordingly, resulting in the 1992 Fund recovering ¥2 966 977 455 (£15 481 228) and the 1971 Fund ¥2 262 835 446 (£11 807 125). The UK Club's contribution to joint costs, £3 617 526, was distributed on the same basis, resulting in the 1992 Fund recovering £791 846 and the 1971 Fund £2 825 680.

5 Action to be taken by the governing bodies

The governing bodies are invited to take note of the information contained in this document.

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SETTLEMENT AGREEMENT

dated 28 October 2002

BETWEEN:

- (1) The International Oil Pollution Compensation Fund 1971,
 - (2) The International Oil Pollution Compensation Fund 1992, on the one hand
- and
- (3) Prisco Traffic Limited ('Prisco'),
 - (4) The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited ('the UK Club'), on the other hand.

Whereas

- (A) On 2 January 2002 the Russian tanker "NAKHODKA" (13 159 GRT), carrying 19 000 tons of medium fuel oil, broke in two sections some 100 km north east of the Oki Islands (Japan), resulting in a spill of some 6 200 tonnes of oil; the stern section sank soon after the incident, with an estimated 10 000 tons of cargo on board; the upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast and grounded on rocks some 200 metres from the shore, near the town of Mikuni in the Fukui prefecture; following the grounding, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline over a distance of more than 1 000 km (together "the Incident").
- (B) The operation to remove the oil from the bow section was completed in February 1997. In total some 2 830 m³ of oil/water mixture was removed. The Japanese authorities simultaneously ordered the construction of a temporary 175 metre-long causeway which, with a large crane, would enable the removal of the oil by road. However, this operation was only used to remove the last 380 m³ of oil/water mixture.
- (C) The International Oil Pollution Compensation Funds 1971 and 1992 (the IOPC Funds) and the UK Club established a Claims Handling Office in Kobe to deal with claims for compensation resulting from the incident. 458 claims totalling Yen 36 045 million were received (the "Claims").

A handwritten signature in black ink, appearing to be 'RTS' followed by a stylized flourish.

(D) Since the total amount of the Claims exceeded the maximum amount available under the applicable international Conventions, 135 million SDR or ¥23 164 515 000, the governing bodies of the Funds decided that payments of compensation should be limited to 80% of the amount of the loss or damage suffered by the individual claimants (the "Claimants").

(E) At their April/May 2002 sessions, the IOPC Funds' governing bodies approved the JMDPC causeway claim for a total of ¥2 043 million. The IOPC Funds also approved the claims by the Japanese Government agencies at ¥1 488 million.

A compromise agreement concerning the claims by the governmental agencies and the JMDPC was placed before the Tokyo District Court and the Court issued a formal recommendation based on this agreement on 30 August 2002.

(F) All the Claims have been settled at a total of ¥25 448 965 207. Some claims have been paid at 80% of the settlement amounts, whereas others, including the claims by the Japanese Government agencies and the JMDPC, have been paid at the full settlement amounts.

(G) The IOPC Funds took recourse action in the Fukui District Court against Prisco, Primorsk Shipping Corporation, the UK Club and the Russian Register of Shipping to recover any amounts paid by the IOPC Funds in compensation. These actions have been contested by all the defendants.

(H) The Claimants with the exception of the governmental agencies and the JMDPC commenced proceedings in the Fukui District Court against the IOPC Funds, Prisco and the UK Club to recover the balance of 20% of the settlement amounts.

(I) The Japanese Government and the JMDPC brought legal actions in the Tokyo District Court against Prisco and the UK Club in respect of those of the claims that had not yet been agreed and in respect of the claims settled to recover that part of the settlement amounts which had not yet been paid.

(J) Prisco and the UK Club brought legal actions in the Fukui District Court against the IOPC Funds for \$ 5 268 386.30 in respect of their subrogated rights relating to payments made by them (the "Subrogated Claims"). The Subrogated Claims have been accepted by the IOPC Funds at ¥638 914 075.

(K) The IOPC Funds submitted a counter claim in the Fukui District Court against Prisco and the UK Club in respect of the IOPC Funds' payments to three prefectures for ¥2 913 million.

(L) At their April/May 2002 sessions, the IOPC Funds' governing bodies considered a submission by the Director of the IOPC Funds relating to a proposal for a global settlement made by the UK Club. The governing bodies approved the proposed global settlement.

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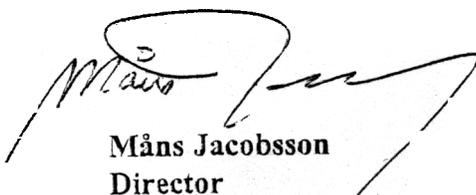
- (M) The IOPC Funds, Prisco and the UK Club wish to resolve all disputes between them in relation to the Incident and thereby enable the Claims to be paid in full and have therefore agreed as follows:

AGREEMENT

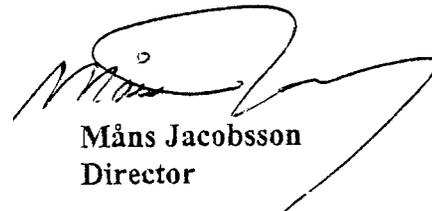
- The IOPC Funds and the UK Club will take steps to ensure that the Claims are paid as to 100% of the settlement amounts.
- 2 The payments referred to in clause 1 and the other compensation payments referred to in paragraph (J) (together "the Settlement Amounts") shall be shared between the IOPC Funds and the UK Club as follows:
- (a) the IOPC Funds pays 58% of the Settlement Amounts
 - (b) the UK Club pays 42% of the Settlement Amounts
- 3 In order to achieve the sharing of payments as stated in clause 2 above:
- (a) Having paid 20% of the settlement amounts in respect of a number of claims, including the claims of the Japanese Government agencies and the JMDPC, the UK Club will pay 20 % of the settlement amounts in respect of all other Claims.
 - (b) The UK Club will reimburse the IOPC Funds ¥5 229 812 901 which represents the Club's overall agreed liability under clause 2(b) above, less (i) 20% of the settlement amounts under 3(a) above and (ii) the sum of ¥ 638 914 075, set out in paragraph (J) above.
 - (c) The UK Club will pay the amount of ¥ 5 229 812 901 to the IOPC Funds by 1 November 2002.
- 4 The joint costs incurred by the UK Club and the IOPC Funds arising out of the Incident as defined in the Memorandum of Understanding signed by the IOPC Funds and the International Group of P&I Clubs will be apportioned between them on a 42:58 basis as set out in clause 2 above.
- 5 Except to the extent provided in the 1969 Civil Liability Convention, the payments made and the expenses borne by the UK Club hereunder are made and borne without admission whatsoever as to any liability .
- 6 All legal actions commenced by the IOPC Funds, Prisco and the UK Club will be terminated and withdrawn in accordance with applicable procedure under Japanese law and
- (a) the Subrogated Claims of Prisco and the UK Club, and
 - (b) all claims of the IOPC Funds in connection with the Incident
- are hereby finally settled, waived and abandoned.

- 7 The IOPC Funds, Prisco and the UK Club shall bear their own legal costs.
- 8 The parties will use their best endeavours to ensure that all legal actions are terminated, giving all reasonable consents and complying with all formalities necessary for this purpose.
- 9 The agreement shall be governed by and construed in accordance with English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.
- 10 This settlement agreement has been completed in four originals, one for each party.

Signed
for and on behalf of
**The International Oil Pollution
Compensation Fund 1971**

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**Måns Jacobsson
Director**

Signed
for and on behalf of
**The International Oil Pollution
Compensation Fund 1992**

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**Måns Jacobsson
Director**

Signed
for and on behalf of
Prisco Traffic Limited

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) 
**Robin Slade, Consultant
HOWE & KEATES**

Signed
for and on behalf of
**The United Kingdom Mutual
Steam Ship Assurance Association (Bermuda)
Limited (the UK Club)**


**Nigel Carden
Director
Thomas Miller P&I Ltd
as agents for Thomas
Miller (Bermuda) Ltd
Managers
For and on behalf of The
United Kingdom Mutual
Steam Ship Assurance
Association (Bermuda)
Limited**