



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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1992 Fund Assembly	92A17	
1992 Fund Executive Committee	92EC56	
Supplementary Fund Assembly	SA8	
1971 Fund Administrative Council	71AC29	●

INCIDENTS INVOLVING THE IOPC FUNDS – 1971 FUND

NISSOS AMORGOS

Submitted by the International Group of P&I Associations

Objective of document:	To provide the 1971 Fund Administrative Council with information concerning the position of the Gard Club in relation to the decision of the Maracaibo Criminal Court of Appeal in March 2011, and in respect of the possible implications of that decision.
Action to be taken:	<u>1971 Fund Administrative Council</u> Information to be noted.

1 Introduction

It will be recalled that the decision of the Maracaibo Criminal Court of Appeal to deny the shipowner's right of limitation was discussed by the 1971 Fund Administrative Council at its 27th session in October 2011. At the conclusion of that debate the International Group of P&I Associations made a short intervention to the effect that a statement could be expected on behalf of the Gard Club at a future date.

2 The judgement

- 2.1 The Gard Club is in full agreement with the Director of the 1971 Fund that there are no grounds on which the shipowner should be denied the right to limit its liability, and that the decision of Maracaibo Criminal Court of Appeal is incorrect.
- 2.2 In their appeal to the Supreme Tribunal, the master, shipowner and Gard Club have pleaded grounds of appeal which include the factors to which the Director has referred, together with a number of other considerations.
- 2.3 For a period of over four months after the incident, the *Nissos Amorgos* remained under arrest whilst official investigations were conducted into the cause of the grounding. These investigations satisfied both the General Prosecutor and the Attorney General that there were no grounds for disputing the right of limitation, and that the conditions were therefore satisfied for them to consent to the release of the ship in accordance with Article VI of the 1969 Civil Liability Convention (1969 CLC). That Article provides for the arresting court to release the ship when the shipowner is entitled to limit liability and has established a fund in accordance with the Convention. The arresting court at Cabimas accepted that these conditions were satisfied, and no appeal was ever made against its decision. No allegation has ever been made that the incident was attributable to actual fault or privity on the part of the shipowner.

- 2.4 Accordingly, in the Gard Club's view the judgement of the Maracaibo Criminal Court of Appeal, overturning the Cabimas decision nearly fourteen years after it was made, is without any possible foundation. It is also maintained, on behalf of the master, shipowners and Club, that the decision under appeal is contrary to the international regime in other respects, notably that it fails to accord precedence to the Conventions over Venezuelan domestic laws; that it fails to treat the 1969 CLC as an exclusive remedy for pollution damage; and that it purports to impose civil liability on the master, contrary to Article III.4 of the 1969 CLC.

3 Possible implications of the judgement

- 3.1 Though it is under appeal to the Supreme Tribunal, the judgement has led to discussion of the implications for the Club and the 1971 Fund if it is upheld, and the Venezuelan courts refuse to recognise the shipowner's right of limitation. The following observations are made on a provisional basis pending further developments in the proceedings.
- 3.2 Firstly, if the owner's right of limitation is denied, and no liability arises for the 1971 Fund under Article 4.1(c) of the 1971 Fund Convention, it may still remain necessary to consider whether liability arises to claimants under Article 4.1(b). That is a question for the Fund rather than for the Club/shipowners. Here the information is simply provided that the Club has made compensation payments up to approximately the amount of the 1969 CLC limitation amount; that a judgement exceeding this figure might be enforced in part by encashment of the bank guarantee which constituted the limitation fund; and that any further amount could not legally be recovered.
- 3.3 Secondly, if the guarantee is encashed, the financial position between the Club and the 1971 Fund will reflect the arrangements adopted to ensure that prompt interim payments were made to the victims of the incident. These were agreed within the framework of the usual claims-handling cooperation between the Clubs and the Fund Secretariat. In this incident it was common ground between the Club and the Fund that there was no basis for disputing the shipowner's right of limitation, and that an audit should be made at the end of the case to ensure that the various financial outgoings were correctly distributed between them.
- 3.4 Against the above background a provisional audit was drawn up in 2006, encompassing all the compensation payments and joint claims-handling expenses incurred respectively by the Club and the 1971 Fund. A provisional adjusting balance has been settled, based on the 1969 CLC limitation amount and the corresponding proportions of claims-handling costs to be borne by the Club and the Fund. The audit remains open pending further adjustments to these figures which are expected to be necessary in the event of any further amounts being awarded in the litigation. The possibility of such adjustments has given rise to correspondence between the Club and the 1971 Fund at various points between 2006 and the present day. Though the calculations are somewhat complex, particularly in view of exchange fluctuations, there has been no disagreement in principle regarding the approach to be taken.

4 Action to be taken

1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited to take note of the information contained in this document.
