



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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1992 Fund Assembly	92A18	
1992 Fund Executive Committee	92EC59	
Supplementary Fund Assembly	SA9	
1971 Fund Administrative Council	71AC31	•

WINDING UP OF THE 1971 FUND

Submitted by the International Group of P&I Associations

Summary:	A number of the pending cases involving the 1971 Fund involve member P&I Clubs of the International Group of P&I Associations (International Group). Therefore the International Group continues to have a direct interest in the discussions taking place in the 1971 Fund Administrative Council on the winding up of the 1971 Fund.
Action to be taken:	<u>1971 Fund Administrative Council</u> Information to be noted.

1 Introduction

- 1.1 As noted in document [IOPC/APR13/4/1/2](#) submitted by the International Group of P&I Associations (International Group) to the April session of the 1971 Fund Administrative Council, there remain five pending incidents involving the 1971 Fund where the Fund may have to pay compensation and/or legal costs. Four of these cases involve member P&I Clubs of the International Group, namely the *Aegean Sea*, *Iliad*, *Nissos Amorgos* and *Plate Princess*. Following the global settlement concluded in 2002 between the Spanish Government, the 1971 Fund, the shipowner and the UK P&I Club, there are no further claims against the Club in the *Aegean Sea*.
- 1.2 However, there remain claims pending in court against the individual P&I Clubs concerned in the *Iliad*, *Nissos Amorgos* and *Plate Princess*, as well as against the 1971 Fund. There are also claims, or potential claims, for accounting adjustments between the Clubs and the Fund. Therefore the three Clubs concerned (the North of England, Gard and Standard P&I Clubs) continue to have a direct interest in the decision to be taken by the 1971 Fund Administrative Council on the winding up of the 1971 Fund, as does the International Group collectively.

2 Consultation with the International Group

- 2.1 The International Group informed the October 2012 meeting of the 1971 Fund Administrative Council that the Consultation Group to be established to examine the outstanding issues to facilitate the process of winding up the 1971 Fund should liaise with the International Group.
- 2.2 Since the October 2012 meeting, the International Group, Gard and North of England Clubs have met with the Secretariat and the Chairman of the Consultation Group to hear their proposals for resolving the outstanding issues in the *Nissos Amorgos* and *Iliad* cases in particular.

3 Position of the International Group on the winding up of the 1971 Fund

- 3.1 As noted in document [IOPC/APR13/4/1/2](#), International Group Clubs share (“pool”) claims amongst themselves where the total cost of claims arising from any one incident exceeds the level of claims retained by each individual Club ie the level in US dollars up to which the Club with the P&I entry of the vessel concerned pays the cost of claims itself without pooling the costs with the other International Group Clubs. The individual Club retention in 1993 at the time of the *Iliad* was US\$3 million and in 1997 at the time of the *Nissos Amorgos* was US\$5 million.
- 3.2 If the total cost of claims paid by the Clubs concerned in each of these individual cases exceeds these limits, then the costs will be pooled amongst all 13 International Group Clubs. The current overall claims exposure for both the North of England in the case of the *Iliad* and the Gard Club in the case of the *Nissos Amorgos* exceeds both of these limits. The outcome of both of these cases and the decision to be taken by the 1971 Fund Administrative Council in this regard is therefore a matter for the 13 member P&I Clubs of the International Group and not just the three Clubs concerned.
- 3.3 In the case of the *Nissos Amorgos* the judgment of the Maracaibo Criminal Court of 26 February 2010 stated ...“As regards the International Compensation Fund for Oil Pollution Damage, in light of the accident which occurred, the said fund is liable to make payment, in accordance with the provisions contained in Articles 2 and 4” ... and ordered that the Fund be notified of the Court’s decision. The Maracaibo Criminal Court of Appeal subsequently agreed with the Criminal Court on 31 March 2011 that the notification requirements of Article 7 of the 1971 Fund Convention have been satisfied; rejecting the Fund’s submissions in that regard and having the effect that a final judgment in the proceedings is binding on the Fund and would not be time barred. The judgment is now final as a result of the rejection by the Supreme Court of appeals by the Club/owner and the 1971 Fund.
- 3.4 When giving judgment the Criminal Court of Appeal stated that the decision of the Cabimas Court in 1997, which had accepted the guarantee for the shipowner’s limitation amount paid by the Gard Club, was not a final ruling. It held that the function of that Court had been a precautionary one and that it had been incapable of accepting limited liability at that stage. The Criminal Court of Appeal did not however, dismiss the shipowner’s right to limit liability, nor did it find any grounds for doing so.
- 3.5 The Court did not stay execution of the judgment pending any further decision with respect to the right of limitation. Nor did it recognise that the guarantee provided to the Cabimas Court constituted a limitation fund rather than simple security for the Bolivarian Republic of Venezuela’s claim. Steps are now in progress to enforce the judgment against the guarantee.
- 3.6 It remains to be seen what other steps may be taken to enforce the Maracaibo judgment, and against whom. Equally the outcomes of the other major claims in Bolivarian Republic of Venezuela are awaited. As a result it remains unclear what the Club and the Fund’s liability will ultimately be. Were the Fund to be wound up then it is highly likely that the Club’s exposure will be increased.
- 3.7 As noted in documents [IOPC/OCT12/3/3/1](#) and [IOPC/APR13/4/1/2](#), the International Group informed the meetings of the Administrative Council that there remains the possibility that the Gard Club will pay at least twice the shipowner’s limitation fund in the *Nissos Amorgos* (perhaps up to the full amount of the Maracaibo claim should that be enforced) and, in accordance with the practice adopted in the case between the Club and the Fund, namely that an audit should be made at the end of the case to ensure that the various financial outgoings are correctly distributed between them, the Club would look to the Fund for reimbursement of any sum above the limitation amount. Such a claim now appears inevitable as a result of the steps being taken to enforce the judgment against the guarantee.
- 3.8 Clearly, it would not be possible for the 1971 Fund to make any further payments if it is wound up prior to resolution of the pending cases. Equally clearly, if the Fund’s liabilities (whether to the Club or to Venezuelan claimants) were to exceed its current assets then a need for additional contributions to be levied might arise.

- 3.9 The most recent of the consultation meetings referred to above took place on 10 September 2013. The Clubs and the International Group have noted the points made by those representing the Fund and are now carefully considering these before deciding how to respond.

4 **Conclusion**

For the reasons outlined in this document, and without prejudice to the final position that the three individual International Group Clubs may take in their own respective cases, the International Group (including the three individual Clubs concerned) still disagrees that the 1971 Fund Administrative Council should be taking steps at this stage to wind up the 1971 Fund, pending a satisfactory resolution of these cases.

5 **Action to be taken**

1971 Fund Administrative Council

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