



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
58th session  
Agenda item 3

71FUND/EXC.58/13  
24 April 1998

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## INCIDENTS INVOLVING THE 1971 FUND

### BOYANG N°51

Note by the Director

<b>Summary:</b>	The 1971 Fund has been notified recently of an incident which occurred in the Republic of Korea in May 1995.
<b>Action to be taken:</b>	Decide whether the time bar period laid down in Article 6.1 of the 1971 Fund Convention can be extended by agreement between the parties.

#### 1 The incident

1.1 On 25 May 1995, the *Boyang N°51* (149 GRT), registered in the Republic of Korea, collided with another Korean vessel, the *Ocean Daisy*, off Sandbaeg Do (Republic of Korea). The *Boyang N°51* was carrying some 160 tonnes of diesel oil and heavy fuel oil in its cargo tanks which was to be delivered as bunker oil to fishing vessels. As a result of the collision, the *Boyang N°51* sank and the oil cargo was spilled.

1.2 The Pusan Marine Accident Inquiry Agency carried out an investigation into the cause of the incident. The investigation showed that the incident was due mainly to the *Ocean Daisy's* failure to sail at a safe speed, but that the *Boyang N°51* had contributed to the incident by not taking proper action to avoid the collision.

1.3 The owner of the *Ocean Daisy* has incurred clean-up costs totalling Won 141 832 490 (£60 000).

1.4 The 1971 Fund was notified of the incident by the P & I insurer of the *Ocean Daisy* on 14 April 1998, ie nearly three years after the incident.

## **2 Limitation proceedings**

2.1 The owner of the *Boyang N°51* commenced limitation proceedings in the competent District Court on the ground that the *Boyang N°51*'s liability for the cost of the clean-up operations incurred by the owner of the *Ocean Daisy* can be limited under the 1969 Civil Liability Convention separately without first having made a set off between the counter claims of the parties. The owner of the *Ocean Daisy* has maintained that limitation can only apply to claims after the counter claims of the two parties have been set off against each other. The District Court agreed with the position of the owner of the *Boyang N°51* and granted the request for limitation of liability and determined the limitation amount at 19 817 SDR (£15 000).

2.2 The owner of the *Ocean Daisy* appealed against the decision. The Court of Appeal upheld the District Court's decision. The owner of the *Ocean Daisy* appealed to the Supreme Court, where the case is pending. If the Supreme Court upholds the *Boyang N°51*'s right of limitation, the owner of the *Ocean Daisy* will submit a claim to the 1971 Fund, since he will not be fully reimbursed for his expenses in respect of clean-up costs.

## **3 Potential claim against the 1971 Fund**

3.1 The owner of the *Ocean Daisy* has taken the view that there should be a 50:50 apportionment of liability between the two vessels. He has stated that, if the *Boyang N°51* were entitled to limit his liability, the payments which the *Ocean Daisy* would receive from the limitation fund would leave an amount of some Won 50 million (£21 000) unpaid. If, however, the Supreme Court were to reverse the decision of the Court of Appeal, the clean-up costs incurred by the owner of the *Ocean Daisy* would be set off in full against the claim of the owner of the *Boyang N°51*.

3.2 The owner of the *Ocean Daisy* has stated that he would like to reach an out-of-court settlement with the 1971 Fund in respect of his claim. For this reason, he has requested that the 1971 Fund should agree to an extension of the time bar period.

3.3 The three-year period laid down in Article 6.1 of the 1971 Fund Convention for the submission of claims against the 1971 Fund expires on or about 25 May 1998. It is unlikely that the Supreme Court will make a final decision on the right of limitation before that date.

3.4 The 1971 Fund has in previous cases taken the position that the three year period laid down in Article 6.1 of the 1971 Fund Convention cannot be extended by the parties. The Fund's Korean lawyer has advised the Director that the applicable Korean law takes the same position. The Executive Committee is invited to express its view on this point.

## **4 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to note the information contained in this document;
  - (b) to decide if the three year time bar period laid down in Article 6.1 of the 1971 Fund Convention can be extended by agreement between the parties; and
  - (c) to give the Director such instructions in respect of this incident as it may deem appropriate.
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