



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
60th session
Agenda item 3

71FUND/EXC.60/15
13 January 1999

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

KYUNGNAM N°1

Note by the Director

Summary:	Claims totalling Won 1 413 million are being assessed. Limitation proceedings are in process.
Action to be taken:	Decide whether the 1971 Fund should pay the established claims and present subrogated claims against the shipowner's limitation fund.

1 The incident

1.1 On 7 November 1997 the coastal tanker *Kyungnam N°1* (168 GRT), registered in the Republic of Korea, ran aground off Ulsan (Republic of Korea). With regard to the incident and the clean-up operations, reference is made to document 71 FUND/EXC.59/16, paragraphs 13.1 and 13.2.

2 Limitation proceedings and claims for compensation

2.1 The Ulsan District Court fixed the limitation amount applicable to the *Kyungnam N°1* at Won 43 543 015 (£21 800). The shipowner has deposited that amount in court.

2.2 The Court decided that claims in the limitation proceedings should be filed by 17 August 1998. In August 1998 the 1971 Fund filed subrogated claims with the limitation court for Won 449 million (£224 000), comprising Won 207 million (£103 000) for clean-up costs and Won 242 million (£121 000) for fishery claims. These claims were those known to the 1971 Fund at that time. Six other claimants

also filed claims for clean-up costs totalling Won 212 million (£106 000), and one fishery association presented a claim for Won 752 million (£376 000).

2.3 The claims filed in court total Won 1 413 (£706 000). There may however be some duplication of claims.

2.4 So far eight of the claims, totalling Won 514 million (£257 000), have been assessed by the 1971 Fund's experts at Won 105 million (£53 000).

2.5 No further claims are expected.

2.6 At its 57th session the Executive Committee took the view that there were no grounds on which the 1971 Fund could challenge the shipowner's right of limitation, nor refuse to pay indemnification to the shipowner under Article 5 of the 1971 Fund Convention. The Committee decided, however, that the shipowner would need to establish a limitation fund in order to be entitled to limit his liability (document 71FUND/EXC.57/15, paragraph 3.12.3).

2.7 The limitation court is waiting for the 1971 Fund's technical experts to finalise their assessments of all the claims. Unfortunately, it may take the experts many months to finalise all assessments, since some of the claims are not well documented.

2.8 The 1971 Fund has adopted a policy that the payment of claims by the Fund should not commence until the shipowner has paid up to the limitation amount. In this case the shipowner has paid the limitation amount into the court and is not prepared to make payments to claimants as well. If the 1971 Fund were to wait for the completion of the limitation proceedings and the distribution of the limitation fund to claimants before starting to make payments, the claimants would have to wait for a considerable time before receiving any compensation. In view of the relatively small amounts involved, the Director therefore proposes that the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund. The 1971 Fund's Korean lawyer has advised the Director that such a procedure would not cause any difficulties from the point of view of Korean law.

3 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to consider whether the 1971 Fund should pay the established claims and present subrogated claims against the shipowner's limitation fund; and
 - (c) to give the Director such instructions in respect of this incident as it may deem appropriate.
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