



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
60th session
Agenda item 3

71FUND/EXC.60/5
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INCIDENTS INVOLVING THE 1971 FUND

KEUMDONG N°5

Note by the Director

Summary:

Nearly all claims have been settled out of court. Two fishing co-operatives are pursuing their claims in court for a total of Won 21 149 million (£10.6 million). The Korean Court has approved claims for compensation by unlicensed fishermen. The 1971 Fund has lodged opposition against this decision.

Action to be taken:

Decide whether to pursue the opposition against the Court's decisions.

1 Introduction

This document deals with developments in respect of the *Keumdong N° 5* incident since the 59th session of the Executive Committee.

2 Legal actions

2.1 Claims by Yosü fishery co-operative

2.1.1 One fishery co-operative (Yosü FCU) took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court totalling Won 17 162 million (£8.6 million) for damage to common fishing grounds, but the claimed amount was later reduced to Won 15 348 million (£7.7 million). In addition, claims were submitted by over 900 individual fishermen belonging to this co-operative, who are fishing boat owners, set net fishing licence holders or onshore fish culture facility operators. These claims total Won 1 641 million (£820 000).

2.1.2 The experts engaged by the 1971 Fund and the Standard Club have assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£354 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that maintained by the claimants. The experts also took the view that the loss of earnings claimed by the fishing boat and set net operators was too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and because certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities have not provided any evidence that the alleged losses were caused by the oil spill.

2.2 Mediation decision

2.2.1 A mediation hearing was held before the Court on 16 October 1998 to consider the individual fishing boat claims. The 1971 Fund explained the methods used by its experts for determining the loss of earnings in respect of different sizes of fishing vessels engaged in various fishing sectors. The claimants did not agree with the 1971 Fund's assessment methods.

2.2.2 The Court rendered a compulsory mediation decision in early December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. Although the Court did not give a detailed explanation for its decision, it stated that income from business prohibited by law was not necessarily an illegal income which was inadmissible for compensation. The Court stated that when deciding on the admissibility of claims the Court should take into account, on a case by case basis, the original purpose of the law in question, the degree of blameworthiness of the claimant and the degree of illegality of the act. In the Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£32 500).

1971 Fund's policy in respect of claims by unlicensed fishermen

2.2.3 The 1971 Fund's policy in respect of the admissibility of claims by fishermen who fish without holding required licences is set out in document 71FUND/EXC.60/13. In essence, that policy is that fishermen operating in contravention of licensing requirements are not eligible for compensation.

Opposition lodged by the 1971 Fund to the Court's decision

2.2.4 The position taken by the Court in the mediation decision referred to in paragraph 2.2.2 is at variance with the policy adopted by the 1971 Fund, ie that claims for loss of income by fishermen operating without a required licence were inadmissible. As set out in document 71FUND/EXC.60/13, in the *Sea Prince* case the 1971 Fund accepted some claims because of the alleviating circumstances. As far as the 1971 Fund is aware, there were no such circumstances in respect of the claims dealt with in the mediation decision.

2.2.5 The 1971 Fund has therefore lodged an opposition to the Court's mediation decision. The Director takes the view that the opposition should be pursued. The Court will resume the normal proceedings and will render a judgement in due course. The Court will also render its judgement in respect of the Yosu co-operative's claim and the other claims by the fishermen belonging to that co-operative.

2.3 Claims by an arkshell fishery co-operative

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£2.1 million). This claim relates to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. The co-operative has reserved its right to increase the amount later for damage not yet quantified which would allegedly be suffered after 1994. This claim had been

rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution. The Court has completed the hearing and will render its judgement on this claim in due course.

2.4 Summary of pending fishery claims

The claims pending in Court are summarised in the table below:

Claimant	Originally claimed amounts (million Won)	Amounts claimed in court (million Won)
Yosu fishery co-operative	18 430	16 989
Arkshell fishery co-operative	25 197	4 160
Total	43 627 (£21.8 million)	21 149 (£10.6 million)

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; and
 - (b) to decide whether to pursue the opposition against the Court's mediation decision in respect of claims by unlicensed fishermen (paragraphs 2.2.2 to 2.2.5 above).
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