



International Oil Pollution
Compensation Funds

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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

AGIA ZONI II

Note by the Secretariat

Objective of document:	To update the 1992 Fund Executive Committee on the latest developments regarding this incident.
Summary:	<p>The product tanker <i>Agia Zoni II</i>, (1 597 GT, built 1972) laden with approximately 2 194 metric tons (mt) of heavy fuel oil, and 370 mt of marine gas oil (MGO)^{<1>}, sank at anchor in good weather conditions at 0200 hours on 10 September 2017, close to Salamina island and the northern part of the designated Piraeus anchorage area in the Saronic Gulf, Greece. It is believed that approximately 500 tonnes of oil were released upon sinking or shortly thereafter, contaminating approximately 20–25 kilometres of the mainland in the vicinity of Athens and Piraeus and 3–4 kilometres of Salamina island. Clean-up operations were commenced very shortly after the incident, concluding at the end of 2017.</p> <p>In November 2017, the wreck of the <i>Agia Zoni II</i> was lifted and towed to the salvor's shipyard at Salamina island where it was arrested by the Public Prosecutor pending his investigation into the cause of the incident. The wreck was drydocked in June 2018 and samples of the hull plating were taken. The wreck was then refloated and it is currently at the salvor's shipyard, where it remains the subject of a dispute between the salvors and shipowner regarding its condition at the time of redelivery.</p> <p><i>Limitation fund claims evaluation procedure</i></p> <p>The limitation fund administrator concluded the evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing his provisional assessed amount totalling EUR 45.45 million, based predominantly on a review of the rates charged by claimants. Eight claimants appealed the assessment and court hearings took place in January and February 2020 to deal with the appeals. In July and September 2020, the 1992 Fund filed pleadings against the limitation fund, in respect of the claims it had paid but which had not been subrogated, due to the short period (six months) set under Greek law for filing claims against the limitation fund, which had expired in May 2018.</p> <p>The 1992 Fund expects that the administrator will dismiss the claims due to the time bar and as a result, the 1992 Fund shall go to court and appeal for a judgment resolving the</p>

<1> The vessel also carried approximately 15 mt of bunkers of MGO, 300 litres of lubricants and 200–300 litres of chemicals.

apparent contradiction between the time allowed by the presidential decree 666/1982 for submission of claims to the limitation fund administrator and the time bar provided by the 1992 Civil Liability Convention (CLC).

Claims assessment

The assessment of the 423 claims filed against the 1992 Fund has continued, with 410 claims approved and compensation payments for 187 claims totalling EUR 14.93 million paid. In June 2020, the 1992 Fund contacted those claimants that had not settled their claims and recommended for them to commence legal actions against the 1992 Fund to protect their rights to compensation to avoid their claims becoming time-barred. In December 2020, the Claims Submissions Office (CSO) in Piraeus was closed.

Legal proceedings against the 1992 Fund

Clean-up contractors

In July 2019, the 1992 Fund was served with legal proceedings filed at the Piraeus Court of First Instance, by two of the clean-up contractors for the balance of their unpaid claims amounting to EUR 30.26 million and EUR 24.74 million respectively, after deducting the advance payments made so far.

In late July 2020, the Piraeus Single-Member Court of First Instance issued judgments, ruling that the competent court to hear the appeals is the Piraeus Multi-Member Court of First Instance, which in January 2021, also issued judgments staying the progress of the proceedings until an unappealable judgment (i.e. a judgment issued by the Appeal Court) is issued in the contractors' appeals against the limitation fund administrator's list of claims. A date has been set in September 2021 for hearing of all appeals against the limitation fund administrator's evaluation.

Fisherfolk

In September 2019, the 1992 Fund was served with legal proceedings by representatives of 78 fisherfolk, 39 of whom have already filed claims with the 1992 Fund's CSO. A court hearing date was set to hear the preliminary submissions but was postponed until 16 March 2021 due to the COVID-19 pandemic. That hearing was then further adjourned until March 2022.

Greek State

In late July 2020, the 1992 Fund was served with legal proceedings by the Greek State to protect its rights to compensation before the three-year time bar expired.

Further claims

As at 28 September 2021, the Fund has been served with 49 further claims in the tourism, fisheries and clean-up sectors, by claimants seeking to protect their rights to compensation before the three-year time bar expired, or seeking the balance of the shortfall between the limitation fund administrator's assessments and the claim submitted.

Investigation into the cause of the incident

The results of the two investigations that have been conducted (to date) into the cause of the incident have reached different conclusions: one determining that the *Agia Zoni II* sank after an explosion, and the other that it sank after the sea water ballast valves were opened. The second investigation by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor places blame on, *inter alia*, the shipowner and representatives of the salvor/one of the clean-up contracting companies. In June 2021, the 1992 Fund's lawyer and a number of other parties were summoned and questioned by the Public Prosecutor investigating the cause of the incident. The 1992 Fund's lawyers answered questions dealing with the procedure followed for the payment of claims, with emphasis on the clean-up contractor's claims. The conclusions of the investigations are still awaited.

Recent developments:

In 2021, the Greek Mercantile Marine^{<2>} instituted a disciplinary tribunal against the crew members mentioned in the ASNA report, who were on board the *Agia Zoni II* at the time of sinking, and the senior representative of the salvor also mentioned in the ASNA report. A number of witnesses were deposed. In June 2021, the disciplinary tribunal published its findings and held that the Master was liable in negligence for the loss of the ship, as he allowed all but two crew members to go ashore, which limited the possibilities of reacting to the emergency. The disciplinary tribunal dealt with the reasons for the sinking of the ship but did not examine the ASNA report's criticism of the salvors for their delayed antipollution response, specifically delays in sealing the hatch covers .

Relevant documents:

The online *Agia Zoni II* incident report can be found via the Incidents section of the IOPC Funds' website.

Action to be taken: 1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	<i>Agia Zoni II</i>
Date of incident	10.09.2017
Place of incident	Saronic Gulf, Greece
Cause of incident	Sinking — circumstances under investigation
Quantity of oil spilled	Unknown but estimated to be approximately 500 tonnes ^{<3>}
Area affected	3–4 km of the coastline of Salamina island and 20–25 km of the coastline south of Piraeus Port and Athens, Saronic Gulf, Greece
Flag State of ship	Greece
Gross tonnage	1 597 GT
P&I insurer	Lodestar Marine Limited ^{<4>}
CLC limit	SDR 4.51 million (EUR 5.53 million) ^{<5>}
STOPIA/TOPIA applicable	Not applicable

^{<2>} As the supervisory body overseeing disciplinary matters for seafarers

^{<3>} Some 2 200 mt of fuel oil and oily water mixture were pumped from the wreck of the *Agia Zoni II*.

^{<4>} Lodestar Marine Limited sold its fixed premium insurance business to Thomas Miller Speciality, a market leading global insurance provider.

^{<5>} Based on the limitation fund figure established at the Piraeus Court of First Instance in October 2017.

CLC + Fund limit	SDR 203 million (EUR 243.87 million) ^{<6>}
Legal proceedings	<p>Limitation proceedings were commenced by the insurer. The limitation fund administrator has published the provisional assessment of claims filed at the limitation fund. Eight claimants appealed his assessment.</p> <p>The 1992 Fund has been served with legal proceedings by the three main clean-up contractors, a claim by 78 fisherfolk, the Greek State and 49 further claims by claimants in the tourism, fisheries and clean-up sectors.</p>

2 **Background information**

Background information is provided in detail in the online *Agia Zoni II* incident report.

3 **Applicability of the Conventions**

Insurance details

- 3.1 The *Agia Zoni II* was insured for oil pollution risks and wreck removal with Lodestar Marine Limited, a fixed premium insurer, which was not part of the International Group of P&I Associations (International Group). The ship did not have any hull insurance. The insurance policy between the shipowner and the insurer contains a limit of liability of EUR 5 million. Nevertheless, the insurer indicated that it would honour the blue card it issued, which has a limit of SDR 4.51 million (EUR 5.53 million). The insurer established a limitation fund for EUR 5.59 million by lodging a bank guarantee with the Court.
- 3.2 The policy of insurance, with an overall limit of EUR 5 million, is insufficient since it covers all legal liabilities, not only oil pollution liabilities. There is, therefore, an under-insurance of the liabilities of the shipowner which will have to be addressed.

4 **Claims for compensation**

- 4.1 The 1992 Fund has received 423 claims amounting to EUR 99.89 million and one claim for property damage of USD 175 000. The 1992 Fund has approved 410 claims and paid some EUR 14.93 million in compensation for 187 claims. Further offers of compensation and advance payments have been made to a number of claimants, whose responses are awaited.

^{<6>}

Based on the exchange rate as at 30 June 2021 of SDR 1 = EUR 1.2013

- 4.2 Further details of the claims received, and payments made by the 1992 Fund are provided in the following table:

Claims submitted to the 1992 Fund

Claims submitted to the 1992 Fund as at 20 September 2021						
Claim Category	Claimed		Approved		Paid by Fund	
	No.	Amount (EUR)	No.	Amount (EUR)	No.	Amount (EUR)
Clean-up	33	83.22 million	28	15.34 million	23	14.07 million*
Environmental Monitoring	6	123 050	5	95 963	4	95 963
Fisheries	195	7.13 million	194	39 614	44	39 614
Property	120	1.02 million	118	200 098	84	196 159
Tourism	66	8.31 million	63	737 828	32	526 683
Other	2	94 000	2	0	0	0
Property damage (USD)	1	175 000	1	0	0	0
Total	423	99.89 million + USD 175 000	410	16.42 million	187	14.93 million

* Several advance payments and further offers of advance payments have been made pending full assessments of the claims

The claims submitted by the clean-up contractors including wreck removal expenses

- 4.3 Further details of the thirty-three claims amounting to EUR 83.22 million, submitted to the limitation fund and to the 1992 Fund^{<7>} by clean-up contractors and other companies, are provided in document IOPC/OCT19/3/11.
- 4.4 The claims relate to: (1) oil removal from the wreck; (2) shoreline clean-up; (3) preparation for, and actual, wreck removal; (4) subsequent cleaning of the wreck in order for the Public Prosecutor's

<7> The 1992 Fund has received thirty-three clean-up claims amounting to EUR 83.25 million.

investigation to be conducted; and (5) caretaking of the wreck following cleaning. Together, these claims cover the period from 10 September 2017 when the *Agia Zoni II* sank, to 30 June 2018.

Limitation proceedings

- 4.5 The 1992 Fund cooperated closely with, and met on numerous occasions, the limitation fund administrator to discuss issues of applicability under the Conventions regarding those claims which were filed both with the limitation fund and the 1992 Fund Claims Submission Office (CSO). The 1992 Fund notes that, broadly speaking, there is a close correlation between the limitation fund administrator's assessments and those of the 1992 Fund's experts.
- 4.6 By 5 May 2018, (the date by which claims against the limitation fund were to be filed) the limitation fund administrator had received 84 claims, totalling EUR 94.4 million. Several claims were filed at the limitation fund which were not filed with the 1992 Fund; conversely, some claimants decided to only pursue their claims against the 1992 Fund rather than to also file claims against the limitation fund. The 1992 Fund submitted its subrogated claim in respect of claims which it had paid by 5 May 2018.
- 4.7 The limitation fund administrator concluded the claims evaluation procedure by publishing the provisional assessments^{<8>} in September 2019. Under Greek law, every claimant against the limitation fund had the opportunity to accept the assessments or file an appeal against the list of accepted claims, within 30 days of the publication of the provisional assessments. Eight parties (including the 1992 Fund) appealed his assessments.
- 4.8 The 1992 Fund's lawyers commenced work on appeals by the 1992 Fund against a number of the claims which were accepted by the limitation fund administrator. It is likely that the legal proceedings arising from claims submitted against the limitation fund may take a considerable time to resolve, although many of the claimants who have filed claims with the 1992 Fund as well as the limitation fund, will receive their compensation from the 1992 Fund.
- 4.9 At a court hearing in January 2020, the limitation fund administrator defended his assessment of the claims against those parties that had appealed his assessment. One central point of the dispute was the objection to the jurisdiction of the Court, since both the limitation fund administrator and the 1992 Fund argued that all appeals against the limitation fund administrator's assessment should be heard jointly before the Piraeus Multi-Member Court of First Instance, where all other appellants (including the 1992 Fund) had filed their appeals, as it affected the overall review of cleaning expenses and other claims which should be done by the same court in a joint hearing.
- 4.10 In late July 2020, the Uni-Member Court issued judgments, ruling that: (1) the competent court to hear the appeals was the Piraeus Multi-Member Court of First Instance; and (2) it was premature to decide on the amount of claims of the clean-up contracting companies, since this was also the object of the appeals against the limitation fund administrator's list of claims, and which would also determine the part of the claim that will be paid out of the 1992 Civil Liability Convention (CLC) limitation fund and the part of the claim that will have to be paid by the 1992 Fund. In January 2021, the Uni-Member Court issued a similar judgment against the third clean-up contractor, staying the progress of the proceedings until an unappealable judgment is issued against the limitation fund.
- 4.11 In September 2020, the 1992 Fund's lawyers filed legal proceedings for some EUR 798 000 against the limitation fund in respect of the subrogated claims the 1992 Fund had paid since May 2018, (the date set under Greek law for filing claims against the limitation fund), or which had not been recognised by the limitation fund administrator since the publication of his assessment in September 2019. A hearing date to hear all the appeals against the limitation fund administrator's assessment was set for

<8> At a figure of EUR 45.45 million.

8 December 2020 but was postponed due to the COVID-19 pandemic. A new date has been set for September 2021.

- 4.12 The 1992 Fund's lawyers are not optimistic that the judge overseeing the distribution of the limitation fund will admit the 1992 Fund's claim. It is likely that the 1992 Fund will have to appeal before the Greek courts for a judgment resolving the apparent contradiction between the time allowed by the Greek presidential decree 666/1982 for submission of claims to the limitation fund administrator, and the time bar provided under the 1992 CLC.

5 Civil proceedings

- 5.1 The following claims have been filed against the 1992 Fund in the Greek courts:

Claims submitted against the 1992 Fund in the Greek courts

Claim Category	Number of claims in court	Amount of claim (EUR)
Clean-up	7	73.01 million
Environmental Monitoring	2	27 086
Fisheries	36	3.35 million
Property	3	54 373
Tourism	6	4.3 million
Total	54*	80.74 million

* Some claims have been filed on behalf of several claimants

Legal proceedings commenced by clean-up contractors

- 5.2 In July 2019, the 1992 Fund was served with legal proceedings by two of the clean-up contractors for the balance of their unpaid claims after deducting the advance payments made by the 1992 Fund. One clean-up contractor claimed the sum of EUR 30.26 million, and the other clean-up contractor claimed a range of figures from EUR 24.74 million, to EUR 15.84 million plus USD 12.48 million^{<9>}.
- 5.3 Court proceedings to deal with the jurisdiction of the court and the possible conflict with the claimants claims against the limitation fund administrator's assessments took place in November 2019, and in July 2020, the Piraeus Multi-Member Court of First Instance issued judgments staying the progress of the proceedings, until an unappealable judgment is issued in the contractors' appeals against the limitation fund administrator's assessment (i.e. a judgment issued by the Appeal Court).
- 5.4 In December 2019, the 1992 Fund was served with legal proceedings for EUR 8.9 million by the third clean-up contractor. The first hearing of this claim was due to take place in early March 2020 but was delayed by the outbreak of the COVID-19 pandemic. As these claims have all been filed at court, interest will begin to accrue on the claims filed.

^{<9>} This was due to the different exchange rates used on the dates of the conclusion of the clean-up operations, or the exchange rate at the time of the initial submission of the claim to the 1992 Fund, and part of the claim being submitted in USD rather than EUR.

- 5.5 In September 2020, the 1992 Fund was served with legal proceedings for EUR 998 870 by one of the clean-up contractors, relating to the disposal costs of liquid waste from one of the vessels used to collect the oil and oily water waste arising from the *Agia Zoni II* incident.
- 5.6 In September 2020 and shortly thereafter, the 1992 Fund was served with further legal proceedings for EUR 2.09 million by three other claimants involved in clean-up operations.

Legal proceedings commenced by fisherfolk

- 5.7 In September 2019, the 1992 Fund was served with legal proceedings amounting to EUR 2.18 million by representatives of 78 fisherfolk (39 of whom had already filed claims with the 1992 Fund's CSO). Court hearings set for January and March 2020 were adjourned due to the COVID-19 pandemic and a new hearing date is awaited.
- 5.8 In September 2020, the 1992 Fund was served with legal proceedings by five fish traders/fisherfolk together amounting to EUR 190 851. Further legal proceedings by other fish traders/fisherfolk were served on the 1992 Fund which together amounted to EUR 970 873.

Legal proceedings commenced by claimants in the tourism sector

- 5.9 In September 2020, the 1992 Fund was served with legal proceedings amounting to EUR 3.28 million by claimants in the tourism sector. Further legal proceedings amounting to EUR 955 641 were subsequently served on the 1992 Fund before the end of 2020.

Legal proceedings commenced by the Greek State

- 5.10 In late July 2020, the 1992 Fund was served with legal proceedings by the Greek State to protect its rights to compensation before the three-year time bar expired. In July 2021, an advance payment was offered to the Greek State in respect of its claim. The 1992 Fund awaits the Greek State's decision as to whether to accept the advance payment.
- 5.11 The hearings of all writs of action against the 1992 Fund were adjourned until February and March 2022.

6 Investigation into the cause of the incident

- 6.1 Full details of the investigations into the cause of the sinking, the investigations and conclusions reached by the National Technical University of Athens and by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor, are detailed in document IOPC/OCT19/3/11.
- 6.2 In June 2021, the 1992 Fund's Greek lawyer received a summons to attend before the 5th Investigating Judge of Piraeus and depose as witness in the matter of the *Agia Zoni II* criminal investigation for the acts of (a) willful shipwrecking and (b) willful pollution. The 1992 Fund's lawyer answered various questions mainly dealing with the procedure followed for the compensation of claims, with emphasis on the cleaners' claims.
- 6.3 At present, the results of the investigation by the Public Prosecutor are still awaited.

Impact of the investigative reports on the 1992 Fund's payment of compensation

- 6.4 The 1992 Fund has sought legal advice from its lawyers in relation to the question of whether the 1992 Fund should continue to assess, and make payment of, the claims for compensation submitted by the the representatives of the salvor/the clean-up contracting company which has been specifically mentioned in the ASNA report.

6.5 The 1992 Fund's lawyers have advised as follows:

Article 4(3) of the 1992 Fund Convention provides that:

'If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the 1992 Fund with regard to preventive measures.'

6.6 It should be noted that the last sentence of Article 4(3) aims at protecting the environment and safeguarding that clean-up and preventive measures will be payable at all times.

6.7 In a similar manner, Article 300 of the Greek Civil Code provides that:

'If the person that suffered the damage contributed to the damage or its extent by his own liability, the court may abstain from awarding compensation or may reduce the amount awarded'.

6.8 The 1992 Fund's lawyers have advised that the exercise of the right to claim clean-up expenses under the 1992 CLC and Fund Conventions by a party in the clean-up business that has intentionally caused the pollution in order to benefit from the right to claim compensation for clean-up services would be considered an abuse by the Greek courts under the provisions of the Greek legislation.

6.9 The lawyers also advise that it would be considered an abuse under the provisions of the European Convention of Human Rights due to the general principles of *dolus omnia corrumpit*^{<10>}, since the party in question would appear to intentionally damage the environment for its own benefit, instead of protecting it as envisioned under Article 4(3) of the 1992 Fund Convention.

6.10 However, the 1992 Fund's lawyers have also advised that the burden of proof rests upon the 1992 Fund to prove before the courts deciding on the issue of compensation, that the claimant intentionally caused the pollution aiming at receiving the clean-up compensation, or show that the claimant had been condemned by a criminal court to that effect by an unappealable judgment. The mere suspicion of such action (even if mentioned in a report issued in the context of a criminal investigation such as the ASNA report) will not be sufficient to deny payment.

6.11 Accordingly, the lawyers advise that payment should only be made to the suspect party upon a suitably worded receipt and release document, which preserves the rights of the 1992 Fund to commence legal proceedings for the recovery of all amounts paid for pollution damages, should the suspect party eventually be condemned by a criminal court by an unappealable judgment.

6.12 The 1992 Fund's lawyers state that if the claimant is eventually condemned by a criminal court by a final judgment and held to have intentionally caused the pollution, the possibility would exist for the 1992 Fund to commence a recourse action under Article 9(2) of the 1992 Fund Convention.

Disciplinary tribunal

6.13 In early 2021, the Greek Mercantile Marine (which supervises maritime professions in Greece) initiated disciplinary proceedings against the crew on board the *Agia Zoni II* at the time it sank, which

<10> English translation 'deceit unravels all'.

had been identified in the ASNA report previously published. Specifically, the ASNA report attributed the loss of the ship and subsequent pollution to the deliberate (and negligent) actions of:

- 1) The Master;
- 2) The foreman;
- 3) The able seaman (ABS);
- 4) The general manager of the shipowning company;
- 5) The legal representative of the shipowning company;
- 6) Representatives of the clean-up contractor / salvors.

- 6.14 The disciplinary tribunal ruled that the Master was liable due to negligence for the loss of the ship because he had allowed all the crew to go ashore (including himself), apart from the foreman and ABS, and this action limited the ability to respond to the emergency.
- 6.15 The 1992 Fund's lawyers state that the disciplinary tribunal deals only with the liability of the seafarers and has no jurisdiction over the clean-up contractor/salvors. Irrespective of the foregoing, the disciplinary tribunal dealt with the reasons for the sinking of the ship and did not examine the ASNA report's criticism of the clean-up contractor/salvor for the delayed antipollution response.
- 6.16 The 1992 Fund's lawyer concludes that both the ASNA report and the National Technical University of Athens accept that the ship was scuttled but they disagree upon the technical reasons.

7 Director's considerations

- 7.1 The 1992 Fund's experts are making progress assessing the claims filed against the 1992 Fund and ensuring that those claimants that had not settled their claims with the 1992 Fund were contacted and recommended to commence legal proceedings against the 1992 Fund in order to protect their rights to claim compensation and avoid their claims becoming time-barred. Further assistance remains available to claimants following the closure of the CSO in Piraeus, in December 2020.
- 7.2 Investigations into the cause of the incident by the Public Prosecutor remain pending. It is not known when the Public Prosecutor will conclude the investigation, which is awaited to determine the cause of the incident.
- 7.3 The Director will continue to monitor this matter and will report the latest developments to the 1992 Fund Executive Committee at its next session.

8 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
