



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT22/3/10	
<b>Date</b>	22 August 2022	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A27	
<b>1992 Fund Executive Committee</b>	92EC79	●
<b>Supplementary Fund Assembly</b>	SA19	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### AGIA ZONI II

#### Note by the Secretariat

<b>Objective of document:</b>	To update the 1992 Fund Executive Committee on the latest developments regarding this incident.
<b>Summary:</b>	<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)<sup>&lt;1&gt;</sup>, 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 salvor 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>In September 2021, the administrator dismissed the claims due to the time bar, and as a result, the 1992 Fund filed an appeal for a judgment resolving the apparent contradiction between the time allowed by the presidential decree 666/1982 for submission of claims</p>

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

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 415 claims approved and compensation payments for 189 claims totalling EUR 14.96 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.

##### *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.

##### *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 2 August 2022, the 1992 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 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 seawater 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.

	In 2021, the Greek Mercantile Marine <sup>&lt;2&gt;</sup> instituted a disciplinary tribunal against the crew members mentioned in the ASNA report, who were on board the <i>Agia Zoni II</i> at the time of sinking, and the senior representative of the salvor also mentioned in the ASNA report. The disciplinary tribunal dealt with the reasons for the sinking of the ship but did not examine the ASNA report's criticism of the salvor for their delayed antipollution response, specifically delays in sealing the hatch covers.
<b>Recent developments:</b>	In June 2022, a judgment (1891/2022) was made by the Piraeus Multi-Member Court of First Instance on the appeals filed against the limitation fund administrator's assessments. The Court dismissed all appeals of all parties and generally upheld the limitation fund administrator's assessments. A number of claimants including the 1992 Fund, are expected to appeal.
<b>Relevant documents:</b>	The online <i>Agia Zoni II</i> incident report can be found via the Incidents section of the IOPC Funds website.
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee</u>
	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 <sup>&lt;3&gt;</sup>
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 <sup>&lt;4&gt;</sup>
CLC limit	SDR 4.51 million (EUR 5.53 million) <sup>&lt;5&gt;</sup>
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (EUR 259.50 million) <sup>&lt;6&gt;</sup>
Legal proceedings	<p>Limitation proceedings were commenced by the insurer. The limitation fund administrator published the provisional assessment of claims filed at the limitation fund. Eight claimants appealed his assessment. In June 2022, the Piraeus Multi-Member Court of First Instance dismissed all appeals.</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>

<sup><2></sup> As the supervisory body overseeing disciplinary matters for seafarers.

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

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

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

<sup><6></sup> Based on the exchange rate as at 30 June 2022 of SDR 1 = EUR 1.278310

## 2 Background information

The background information to this incident is summarised above. Further background information is provided in more 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 415 claims and paid some EUR 14.96 million in compensation for 189 claims. Further offers of compensation and advance payments have been made to a number of claimants whose responses are awaited.

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

Claims submitted to the 1992 Fund as at 2 August 2022						
Claim Category	Claimed		Approved		Paid by Fund	
	No.	Amount (EUR)	No.	Amount (EUR)	No.	Amount (EUR)
Clean-up	33	83.22 million	28	15.87 million	24	14.10 million*
Environmental Monitoring	6	123 050	5	95 963	4	95 963
Fisheries	195	7.13 million	195	39 614	44	39 614
Property	120	1.02 million	119	200 819	85	196 879

<b>Tourism</b>	66	8.31 million	65	747 409	32	526 683
<b>Other</b>	2	94 000	2	0	0	0
<b>Property damage (USD)</b>	1	175 000	1	0	0	0
<b>Total</b>	<b>423</b>	<b>99.89 million + USD 175 000</b>	<b>415</b>	<b>16.95 million</b>	<b>189</b>	<b>14.96 million</b>

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

*Claims submitted by the clean-up contractors, including wreck removal expenses*

- 4.3 Further details of the 33 claims amounting to EUR 83.22 million, submitted to the limitation fund and to the 1992 Fund<sup><7></sup> 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 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). Broadly speaking, there was 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 that were not filed with the 1992 Fund; conversely, some claimants decided to only pursue their claims against the 1992 Fund rather than also file claims against the limitation fund. The 1992 Fund submitted its subrogated claim in respect of claims that it had paid by 5 May 2018.
- 4.7 The limitation fund administrator concluded the claims evaluation procedure by publishing the provisional assessments<sup><8></sup> 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 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, including disputes regarding the jurisdiction of the Court, arguing that all appeals against the limitation fund administrator's assessment should be heard jointly before the Piraeus Multi-Member Court of First Instance, where

<7> The 1992 Fund has received 33 clean-up claims amounting to EUR 83.23 million.

<8> At a figure of EUR 45.45 million.

all other appellants (including the 1992 Fund) had filed their appeals, as it affected the overall review of cleaning expenses and other claims, and should logically be done by the same court in a joint hearing.

- 4.9 In July 2020 and January 2021, the Piraeus Single-Member Court of First Instance 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 claimed by the clean-up contractors, since this was 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 limitation fund and the part of the claim that will have to be paid by the 1992 Fund. The claims by the clean-up contractors were stayed until an unappealable judgment is issued against the limitation fund.
- 4.10 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 December 2020 but was postponed due to the COVID-19 pandemic. In September 2021, the claims were dismissed due to the time bar. The 1992 Fund filed an appeal and further supplementary pleadings in respect of the subrogated claims the 1992 Fund had paid.
- 4.11 In June 2022, the Piraeus Multi-Member Court of First Instance issued a judgment (1891/2022) on the appeals against the limitation fund administrator's assessments, which generally ratified the amounts accepted by the limitation fund administrator and dismissed further claims including those of the 1992 Fund for the subrogated claims it had paid.
- 4.12 Specifically, the Court held that:
- (a) All claims filed by claimants for 'pain and suffering' were dismissed, being considered outside the scope of the 1992 Civil Liability Convention (CLC) and 1992 Fund Convention.
  - (b) The fact that certain charges were included within the clean-up contractors' standard tariffs, did not make them 'reasonable' under the criteria found within the 1992 CLC and Fund Conventions and 1992 Fund's Claims Manual, and that SCOPIC<sup><9></sup> rates were not suitable to be used in oil pollution operations.
  - (c) The 1992 Fund's appeal against the limitation fund administrator's assessments in respect of 33 claims, was dismissed due to an alleged lack of 'right to sue'. Specifically, the Court ruled that under Presidential Decree 666/1982 (regulating the setting up and operation of the limitation fund), the only parties that had the right to appeal were 'creditors and the debtor', and 'creditors' are only those who have suffered direct damage or loss arising from the incident. The Court considered that the 1992 Fund did not suffer direct damage and thus was not entitled to appeal, but could only intervene in respect of claims to which the 1992 Fund has been subrogated.
  - (d) The 1992 Fund's appeal for the 1992 Fund's subrogated payments made to claimants, to be included within the limitation fund, was dismissed on the ground that the limitation fund administrator was correct to dismiss the claims due to their late submission<sup><10></sup>.

---

<9> Special Compensation Protection and Indemnity Clause.

<10> The claims were only filed 'late' due to the short six month time allowed to file claims against the limitation fund.

- 4.13 In respect of the rejection of the 1992 Fund's appeal in respect of the 33 claims, the 1992 Fund's Greek lawyers advise that in their view, the Court judgment is wrong, since:
- There is nothing in Presidential Decree 666/1982 limiting the definition of 'creditor' to the parties that suffered direct damage only and not to third parties that have been subrogated;
  - Pursuant to Article V(5) and (6) of the 1992 CLC, the rights of subrogation cover '*the rights which the person so compensated would have enjoyed under this Convention*'. Thus, any subrogated person should be considered a creditor of the limitation fund;
  - Irrespective of the foregoing, pursuant to Articles 4 and 7 of the 1992 Fund Convention and Article IX(3) of the 1992 CLC, the 1992 Fund is entitled to participate in any legal proceedings (including those regarding the distribution of the limitation fund) without reservation or conditions.
- 4.14 In respect of the 1992 Fund's appeal for the 1992 Fund's subrogated payments made to claimants to be included within the limitation fund, the Court held that Article VII of the 1992 CLC (providing for rights of compensation to be extinguished within three years of the date of damage or six years from the date of the incident), only applied when a claim was filed against the owner/insurer where a limitation fund has not been established.
- 4.15 The court also held that where a limitation fund had been established, the time for presenting claims against the limitation fund was regulated by Presidential Decree 666/1982 which provides that the limitation fund administrator may call for claims to be presented no shorter than 15 days and no longer than six months from publication in the media of the respective notification.
- 4.16 The 1992 Fund intends to appeal against judgment 1891/2022, on both legal issues, namely: (1) whether the 1992 Fund has the right to appeal against the limitation fund administrator's list of claims; and (2) what is the significance of the extinction of time provided in Article VIII of the 1992 CLC, when the limitation fund has been established.

## 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
<b>Total</b>	<b>54*</b>	<b>80.74 million</b>

\* 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<sup><11></sup>.
- 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. At a court hearing in September 2021, the 1992 Fund's lawyers submitted further pleadings upon the concept of reasonableness as defined under the Conventions. A number of witnesses were called for examination and cross-examination. As these claims have all been filed at court, interest will begin to accrue on the claims filed.
- 5.5 In September 2020, the 1992 Fund was served with legal proceedings for: (1) 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; and (2) with further legal proceedings for EUR 2.09 million by three other claimants involved in clean-up operations.
- 5.6 In September 2021, the 1992 Fund's lawyers attended court hearings and filed supplementary pleadings relating to the concept of reasonableness as defined under the Conventions, in relation to the tariff rates employed by the clean-up contractors, which sought to maximise commercial profit. The 1992 Fund's lawyers called and cross-examined a number of witnesses involved with the clean-up operations. In June 2022, the Court issued judgment 1891/2022 (see paragraphs 4.11-4.16).

*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. A hearing took place in early January 2022 before the Piraeus Court of First Instance, and a judgment is still 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. Court hearings took place in 2022 for these claims and judgments are awaited.

*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

---

<sup><11></sup> 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.



subsequently served on the 1992 Fund before the end of 2020. Various court proceedings have taken place in late 2021 and judgments are awaited.

*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 still awaits the Greek State's response in order that the advance payment may be paid.
- 5.11 The Director and Claims Manager responsible for dealing with the incident, visited Greece in May 2022 to meet with the Minister for Shipping and Insular Policy, members of the Hellenic Coast Guard and Ministries dealing with the incident, to discuss the Greek State's claim and issues arising from the incident, including the lack of conclusion to the investigation into the cause of the incident.
- 5.12 The hearings of all writs of action against the 1992 Fund were adjourned until February and March 2022. Judgments in respect of the writs of action are awaited.

**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 fifth Investigating Judge of Piraeus and be deposed as a witness in the matter of the *Agia Zoni II* criminal investigation for the acts of (a) wilful shipwrecking and (b) wilful pollution. The 1992 Fund's lawyer answered various questions, mainly dealing with the procedure followed for the compensation of claims, with emphasis on the clean-up contractors' claims.
- 6.3 At present, the results of the investigation by the Public Prosecutor are still awaited.
- 6.4 The 1992 Fund has received unconfirmed reports that the Public Prosecutor's report is currently with the District Attorney to decide whether to pursue criminal charges against the owner and salvor/clean-up contractor. Further details are awaited.

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

- 6.5 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 representatives of the salvor/the clean-up contracting company, which has been specifically mentioned in the ASNA report.
- 6.6 The 1992 Fund's lawyers have advised that, based on Article 4(3) of the 1992 Fund Convention, the 1992 Fund may be exonerated wholly or partially from its obligation to pay if it proves that the pollution damage resulted from an act or omission carried out with the intent to cause damage by the person who suffered the damage or from the negligence of that person. However, they have also advised that there shall be no such exoneration of the Fund with regard to preventive measures<sup><12></sup>.

---

<12> The last sentence of Article 4(3) aims at protecting the environment and safeguarding so 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 have also advised 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*<sup><13></sup>, 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 further 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 in order to receive 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 had been identified in the previously published ASNA report. Specifically, the ASNA report attributed the loss of the ship and subsequent pollution to the deliberate (and negligent) actions of:

- 1) The shipowner;
- 2) The two crew members on board at the time of the incident;
- 3) The general manager of the shipowning company;
- 4) The Designated Person Ashore (DPA) of the shipowning company;
- 5) Representatives of the clean-up contractor/salvor.

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 able seaman, 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/salvor. Irrespective of the foregoing, the

---

<13> English translation ‘*deceit unravels all*’.

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 continues to deal with claims that have been validly presented.
- 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. It is also not known whether the District Attorney will decide to pursue criminal charges against the owner and clean-up contractor.
- 7.3 The 1992 Fund will file appeals in respect of the legal issues arising from judgment 1891/2022, dealing with claims filed at the limitation fund, since the 1992 Fund should be able to recover the subrogated claims it has paid to claimants in lieu of those claims being paid out of the limitation fund.
- 7.4 The Director will continue to monitor this matter and 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.

---