



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/APR24/3/2	
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<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES28	
<b>1992 Fund Executive Committee</b>	92EC82	●
<b>Supplementary Fund Assembly</b>	SAES12	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### AGIA ZONI II

#### Note by the Secretariat

**Objective of document:**

To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

**Summary:**

The product tanker *Agia Zoni II* (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><1></sup>, sank at anchor on 10 September 2017, close to Salamina island and the northern part of the designated Piraeus anchorage area in the Saronic Gulf, Greece. Upon sinking, or shortly thereafter, it is believed that approximately 500 tonnes of oil were released, 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.

In November 2017, the wreck of the *Agia Zoni II* 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. As at 2 April 2024, it has remained at the salvor's shipyard.

Limitation fund claims evaluation procedure

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. Various parties (including the three main clean-up contractors) appealed against the Limitation Fund Administrator's assessments, seeking higher compensation. The 1992 Fund also appealed requesting the compensation to be reduced. In September 2020, the 1992 Fund filed additional claims 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 expired in May 2018.

In October 2020, 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 to the Limitation Fund and the time bar provided by the 1992 Civil Liability Convention (1992 CLC). All appeals against the Administrator's decision were dismissed and appeals have been filed before the Appeals Court which are set to be heard in September 2024.

<1>

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

Claims assessment

The assessment of the 424 claims filed against the 1992 Fund has continued, with 418 claims approved and compensation payments for 192 claims totalling EUR 16.88 million paid.

Legal proceedings against the 1992 Fund

Claims have been filed against the 1992 Fund by the clean-up contractors; representatives of 78 fishers, the Greek State; and 49 further claimants in the tourism, fisheries and clean-up sectors.

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 intentional explosion, and the other that it sank after the seawater ballast valves were intentionally opened.

In 2021, a disciplinary tribunal was instituted by the Greek Mercantile Marine<sup><2></sup> 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. 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.

**Recent developments:**

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, appealed and a hearing date in February 2024 was set, but subsequently adjourned until September 2024.

Details of a decision of the Council of judges were recently released to the 1992 Fund's lawyers and are summarised in Section 6, paragraph 6.3 of this document. Further to the investigation, a trial date has been set for 24 October 2024. As at 2 April 2024, further details are awaited.

**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	Intentional 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 244.78 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 the assessment. In June 2022, the Piraeus Multi-Member Court of First Instance dismissed all appeals. The 1992 Fund has subsequently appealed and judgment is awaited.</p> <p>The 1992 Fund has been served with legal proceedings by the three main clean-up contractors, a claim by 78 fishers, the Greek State and 49 further claims by claimants in the tourism, fisheries and clean-up sectors.</p>

## 2 Background information

- 2.1 The product tanker *Agia Zoni II* (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), 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.
- 2.2 In November 2017, the wreck of the *Agia Zoni II* 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, as at 2 April 2024, it was 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.
- 2.3 Further background information is provided in more detail in the [online \*Agia Zoni II\* incident report](#).

<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 applicable when the 1992 Fund Executive Committee authorised payment, 2 November 2017, i.e. SDR 1 = EUR 1.2058.

### 3 Applicability of the Conventions

#### 3.1 Insurance details

3.1.1 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.

### 4 Claims for compensation

4.1 The 1992 Fund has received 424 claims amounting to EUR 100.21 million and one claim for property damage of USD 175 000. The 1992 Fund has approved 418 claims and paid some EUR 16.88 million in compensation. Further offers of compensation and advance payments have been made to a number of claimants whose responses are awaited. Further details of the claims received and payments made by the 1992 Fund are provided in the table below:

Claims submitted to the 1992 Fund as at 2 April 2024						
Claim category	Claimed		Approved		Paid by 1992 Fund	
	Number	Amount (EUR)	Number	Amount (EUR)	Number	Amount (EUR)
Clean up	34	83.54 million	30	16.26 million	25	16.011 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	86	200 818
Tourism	66	8.31 million	66	755 359	33	534 633
Other	2	94 000	2	0	0	0
Property damage (USD)	1	175 000	1	0	0	0
<b>Total</b>	<b>424</b>	<b>100.21 million + USD 175 000</b>	<b>418</b>	<b>17.35 million</b>	<b>192</b>	<b>16.882 million</b>

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

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

4.2.1 Further details of the 34 claims amounting to EUR 83.54 million, submitted to the limitation fund and to the 1992 Fund by clean-up contractors and other companies, are provided in document [IOPC/OCT19/3/11](#). The Greek State amended its claim for liquid waste disposal costs by virtue of a recent ministerial decision of the Minister of Shipping and Insular Policy. The amended claim was paid in February 2024.

4.2.2 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.

#### 4.3 Limitation proceedings

- 4.3.1 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's Claims Submission Office. Broadly speaking, there was a close correlation between the Limitation Fund Administrator's assessments and those of the 1992 Fund's experts.
- 4.3.2 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. The 1992 Fund submitted its subrogated claim in respect of the claims that it had paid by 5 May 2018. The Limitation Fund Administrator concluded the claims evaluation procedure by publishing the provisional assessments<sup><7></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.
- 4.3.3 In September 2020, the 1992 Fund's lawyers filed additional claims for some EUR 798 000 against the limitation fund in respect of the subrogated claims the 1992 Fund had paid since 5 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. In October 2020, 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 it had paid.
- 4.3.4 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. For further information on the judgment, see document [IOPC/NOV23/3/9](#).
- 4.3.5 In late 2022, the 1992 Fund appealed against judgment 1891/2022, on two legal issues, namely: (1) whether the 1992 Fund had the right to appeal against the Limitation Fund Administrator's list of claims; and (2) what was the significance of the extinction of time provided in Article VIII of the 1992 Civil Liability Convention (1992 CLC), when the limitation fund had been established. The Court set a hearing date in February 2024 which was the earliest available date, but this has been adjourned until September 2024.

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<sup><7></sup> At a figure of EUR 45.45 million.

## 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	73.33 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>81.06 million</b>

\* Some claims have been filed on behalf of several claimants.

5.2 For further details of the claims filed against the 1992 Fund in the Greek courts, see document [IOPC/NOV23/3/9](#).

5.3 The hearings of all writs of action against the 1992 Fund have been adjourned until an unappealable judgment is issued against the limitation fund.

## 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 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 Decision of the Council of judges

6.3.1 In March 2024, the 1992 Fund's Greek lawyers were allowed to obtain copies from the criminal file for the incident by the District Attorney, which include a decision of the criminal judges sitting in Council, as follows:

#### *Surveys/Investigations*

6.3.2 All experts appointed by the authorities agree that the ship was sunk intentionally, but only the National Technical University of Athens attributes the loss to the use of explosives set on her hull. All other experts agree that the loss was caused by opening up from within the ship, the ballast water valves of the bottom starboard ballast tanks 2, 3 and 4 and by leaving open the engine room porthole which allowed more sea water into the engine room, once the ship reached the critical draft.

6.3.3 All experts agree that oil leaked out of the ship from the cargo hold covers and the cargo survey

hatches which were unscrewed from within the ship by the two crew members remaining on the ship (the cargo hold covers had been closed and sealed upon loading by the customs authorities on 9 September 2017).

*Criminal evaluation/Indictment*

- 6.3.4 The criminal investigation commenced on 15 September 2017 and was completed on 9 March 2022. The criminal department of the Piraeus Court handled 21 separate criminal complaints. All of the certificates of the ship were up-to-date, and there were no indications of any criminal liability of the Greek Coast Guard officers in charge of the ship inspection and seaworthiness certificates.
- 6.3.5 The list of parties whose criminal involvement was examined were:
1. The engine room foremaster;
  2. The AB seaman;
  3. The Master;
  4. The shipowning company representative;
  5. The representative of the first clean-up company;
  6. The Chief Engineer;
  7. The shipowning company General Manager;
  8. The Designated Person Ashore (DPA) of the shipowning company; and
  9. The representative of the second clean-up company (which was initially on scene but subsequently replaced).
- 6.3.6 The criminal judges concluded that there are no indications of any criminal liability for the four parties listed from 6 to 9 in the above list. However, there appear strong indications of criminal liability for the five parties (listed from 1 to 5 in the above list), on the following grounds:
- a. As per the opinion of all experts, the ship was intentionally sunk in order to cause pollution;
  - b. According to all experts, (with the exception of the National Technical University of Athens), the sinking was caused by opening up from within the ship the ballast water valves of the bottom starboard ballast tanks 2, 3 and 4, and by leaving open the engine room porthole. This could only have been done by the two crew members who remained on board (there was no indication of any third-party boarding and leaving covertly);
  - c. Notwithstanding the progressive starboard list of the ship, the two crew members did not act or notify anyone;
  - d. Whilst the sinking is estimated to have commenced at about 01:25 hours with a gradual starboard list, the Greek Coast Guard was first notified at 02:10 hrs by another ship close-by, without either of the above two crew members on board, or the Master or the shipowning company having called earlier;
  - e. Despite the second clean-up company having previously contacted the shipowning company, and its antipollution vessel had already started operating onsite, the owners of the *Agia Zoni II* awarded the salvage and antipollution contract at 06:30 hrs with delay, to the first clean-up company which had no experience in that field of work; and
  - f. The closing and sealing of the 11 cargo tank covers was achieved by that company, 53 hours after the ship sank, which is considered a very long timeframe.
- 6.3.7 In view of the above, the two crew members who remained on board, are indicted for:
1. Intentionally causing malicious maritime pollution that could and did, damage the environment and third-party properties, by unscrewing the cargo tanks' covers from which oil leaked into the sea following the ship' s starboard list, which they caused by intentionally allowing ballast water in the starboard bottom ballast tanks 2, 3 and 4;

2. Intentionally sinking the ship by illegally opening the starboard valves of the bottom ballast tanks 2, 3 and 4 and opening the engine room port hole, which endangered human life; and
3. Intentionally discharging into the sea, polluting materials.

6.3.8 The Master, the shipowning company representative and the representative of the first clean-up company are indicted as instigators of all above criminal actions, aiming at causing extensive maritime pollution in order to benefit from the remuneration for antipollution works.

6.3.9 It may be noted that the decision of the criminal judges committing the above five parties to trial contains the following negative remarks about the first clean-up company:

- The quality and speed of antipollution services offered is considered insufficient since the company had no antipollution expertise or experience; and
- That company's personnel were not co-operating with the authorities but, on the contrary, tried to prevent persons acting for the Greek authorities, gaining access to the wreck.

6.3.10 A date has been set for 24 October 2024 which commits to a full trial (expected to last 4-6 days), with the five indicted parties) facing the charges mentioned above, and at the end of which a judgment is to be issued. As at 27 March 2024, further details are awaited.

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

6.4.1 The 1992 Fund has received 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.

6.4.2 For further information on the 1992 Fund's Greek lawyer's advice, see document [IOPC/NOV23/3/9](#).

#### 6.5 Disciplinary tribunal

6.5.1 In early 2021, the Greek Mercantile Marine 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:

- (i) the shipowner;
- (ii) the two crew members on board at the time of the incident;
- (iii) the General Manager of the shipowning company;
- (iv) the Designated Person Ashore (DPA) of the shipowning company; and
- (v) representatives of the clean-up contractor/salvor.

6.5.2 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.

6.5.3 The 1992 Fund's lawyers state that the disciplinary tribunal deals only with the disciplinary punishment of the seafarers and has no jurisdiction over the clean-up contractor/salvor. Specifically, 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.

6.5.4 The 1992 Fund's lawyers conclude that both the ASNA report and the report by 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 still remain pending and the Director will report the results of the criminal trial of the individuals indicted by the criminal judges, which is due to take place in October 2024, in due course.
- 7.3     The 1992 Fund has filed 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 incident 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.

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