



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
18th session
Agenda item 3

FUND/EXC.18/2
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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS
(TANIO INCIDENT)

Note by the Director

1 Settlement of Claims

1.1 At the 14th session of the Executive Committee, the Director reported that claims had been agreed in the total amount of FFr348 211 098 and that an aggregate amount of FFr221 201 452 had been paid to claimants (Annex to document FUND/EXC.14/2, reproduced as Annex I to this document). No further settlements or payments have been made since the 14th session.

1.2 It should be noted that the amount claimed against the IOPC Fund by many of the claimants exceeded the amounts at which settlements were made. For example, the French Government claimed an amount of FFr489 820 401, whereas in the settlement between the IOPC Fund and the French Government only an amount of FFr326 921 937 was accepted by the IOPC Fund. However, the agreements on the amounts were reached for the purpose of distributing the money available under the Fund Convention, in the interest of a speedy settlement, without prejudice to each claimant's right to claim beyond the amount accepted by the IOPC Fund against the owner of the TANIO and other third parties.

1.3 The only claim which may remain is one submitted to the Court of Brest by the Association de Marins Pêcheurs amounting to FFr500 000. However, this claim has not been pursued against the IOPC Fund.

1.4 For details of the claims mentioned above and the decisions of the Executive Committee at previous sessions, reference is made to the documents listed in paragraph 1.3 of document FUND/EXC.12/2 and to paragraphs 2 and 3 of document FUND/EXC.14/2.

2 Further Part Payments by the IOPC Fund

2.1 Part payments to claimants totalling FFr221 201 452 were made in 1983, 1984 and 1985. For details of these part payments,

reference is made to document FUND/EXC.12/2, paragraphs 4.1 - 4.3, and document FUND/EXC.14/2, paragraphs 2.3, 2.4, 2.6, 2.7 and 3.11.

2.2 In September 1984 the liquidator of the shipowner's limitation fund, who was appointed by the Civil Court of Brest, made a first distribution of the limitation fund, amounting to FFr19 147 973. An amount was reserved for the final distribution of the limitation fund, since not all claims had been settled by the time of the first payment. This reserve (including interest) amounted to approximately FFr3 450 000 as at 30 June 1987, and is earning interest at market rate. The amount of compensation that will actually be paid under the Civil Liability Convention therefore increases as time passes.

2.3 The total amount of compensation to be paid by the IOPC Fund is FFr244 746 000, including the amount actually paid under the Civil Liability Convention. The amount of compensation to be paid by the IOPC Fund will, therefore, be reduced as the final distribution of the owner's limitation fund is delayed. This issue was dealt with in detail in paragraphs 4.2 and 4.3 of document FUND/EXC.14/2. For the reasons set out in that document, ie in order to prevent a situation arising whereby the aggregate amount actually paid by the IOPC Fund exceeds the total amount to be paid by it under the Fund Convention, the Director took the position that no further part payments should be made, at least not at that stage.

2.4 On 31 March 1987, the Court of Brest authorised the liquidator of the limitation fund to make a final distribution of the fund on 1 June 1987, or as soon as possible thereafter. The Director has been informed that the distribution will take place on 1 October 1987.

2.5 Once the exact amount paid to claimants from the limitation fund is known, the Director will examine whether further payments should now be made by the IOPC Fund.

3 Legal Action Against the Shipowner and Other Parties

Basis of the Legal Action

3.1 In 1983, the IOPC Fund took legal action in the Tribunal de Grande Instance in Brest against the following persons for the purpose of recovering the amounts paid to the claimants:

- (a) La société Industrie Navale Meccaniche Assini (INMA), the shipyard that repaired the TANIO in 1979;
- (b) La société Locafrance International Leasing (Locafrance), the registered owner of the TANIO at the time of the incident;
- (c) La société Guardiola Shipping Corporation (Guardiola), charterer of the TANIO at the time of the incident;

- (d) La compagnie Malgache de Transports Pétroliers (Petromad), the company having sub-chartered the vessel and being responsible for the management of the TANIO at the time of the incident;
- (e) La Société Française des Transports Pétroliers (SFTP), responsible for the control of the repairs carried out by INMA and the technical management of the TANIO at the time of the incident;
- (f) Le Bureau Véritas, the classification society that monitored the repairs to the TANIO in 1979;
- (g) The United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), in its capacity of insurer of the civil liability of certain defendants.

3.2 The French Government has taken action against the same defendants for the purpose of obtaining compensation for that part of its total claim which was not compensated by the shipowner's limitation fund and the IOPC Fund. The IOPC Fund and the French Government co-operate closely in their recourse actions.

3.3 In addition, other claimants have taken action against the defendants mentioned above for the same purpose.

3.4 The ownership of the TANIO and the very complex relationship between the different companies involved in the operations of the TANIO during the period which is of interest for the legal proceedings are set out in the Annex to document FUND/EXC.9/3, paragraphs 2.2 - 2.3, and in the diagram attached to the Annex.

3.5 The IOPC Fund has claimed in subrogation an amount of FFr221 201 452, being the aggregate it has paid so far to all claimants, whereas the French Government has claimed an amount of FFr261 737 874, being the amount at which the French Government had assessed the damage minus the amount paid to it out of the limitation fund and by the IOPC Fund, to be paid jointly and severally by all defendants. The IOPC Fund and the French Government have also claimed interest on these amounts, estimated provisionally at a total of FFr411 000 000, bringing the aggregate amount of the claims to FFr893 939 320 (£91 428 200).

3.6 The grounds on which the actions taken by the IOPC Fund and the French Government against the various defendants were based can be briefly summarised as follows:

Locafrance, as the registered owner, had failed to put the ship in a seaworthy and navigable state. The failure of Locafrance to organise a proper mechanism of control of the quality of the extensive repairs carried out by INMA constituted a personal fault on the part of Locafrance, which was therefore not entitled to limit its liability under the Civil Liability Convention. INMA had not carried out the repairs to the TANIO in a

proper manner. SFTP had not exercised due diligence in the supervision of the repair work at INMA and in checking the results thereof. Guardiola had failed to supervise the execution of the repair work properly. In addition, Guardiola had an obligation to put the ship in a seaworthy condition. Bureau Véritas did not fulfil its obligation to check the quality of the repair work at INMA properly. Petromad failed to ensure that the Master of the TANIO was properly instructed concerning cargo distribution. The UK Club was sued as insurers of Petromad and Guardiola.

3.7 The grounds for the actions are set out in more detail in Annex II to this document.

3.8 Various technical terms relating to ship design and construction were explained in Annex III to document FUND/EXC.16/3.

Investigations into the cause of the incident

3.9 Soon after the incident two official enquiries were initiated. A Technical Enquiry Commission, which was set up by the Ministry of Transport, submitted its report in July 1981 (the Rocquemont Report); this report is of less importance today, since additional information became available after its publication, following an underwater examination of the sunken part of the hull. An "Expertise Judiciaire" under Mr H Bensussan, ordered by the Commercial Court of Le Havre in 1980, published a report in 1982 (First Bensussan Report). This report was summarised in document FUND/EXC.16/3, paragraphs 3.11 - 3.13.

3.10 In 1984, the President of the Court in Brest reconvened the Expertise Judiciaire with the task of giving its opinion on the causes of the loss of the TANIO in the light of all the information already filed or to be made available by the parties and any submissions made by them as to the cause of the fracture which made the ship break. The Expertise Judiciaire submitted its new report in March 1986 (Second Bensussan Report), after the parties had been given the opportunity to state their views on the cause of the incident.

3.11 The IOPC Fund, in co-operation with the French Government, employed eminent French and English technical experts to examine all available documents in order to establish the cause of the incident. These experts (hereinafter referred to as the IOPC Fund's experts) <1> submitted three technical reports to the Expertise Judiciaire. The findings of the IOPC Fund's experts were set out in document FUND/EXC.16/3, paragraphs 3.14 - 3.16.

<1> Mr M Pascal: Ingénieur Général and Head of Service Technique des Contructions et Armes Navales (STCAN) 1969-77.
Mr M Osborne: Chief Naval Architect, Shell Seatex; great experience in tanker design and construction as well as in tanker repairs; employed with Lloyd's Register of Shipping 1968-1974.

3.12 The defendants advanced various theories as to the cause of the disaster and submitted a number of technical reports which were examined by the Expertise Judiciaire (see document FUND/EXC.16/3, paragraphs 3.17 - 3.23).

Second Bensussan Report

3.13 The Expertise Judiciaire confirmed in its Second Report the theory which it had already stated in its First Report, ie that the TANIO broke into three parts (the three-part theory), and maintained that the initial fracture originated in the vicinity of frame 131 in wing tank n°6. As for the cause of the initial fracture, the Expertise Judiciaire reiterated its previous conclusion highlighting, in particular, three causes which "contributed" to the disaster, viz insufficient reduction in speed to allow for the bad weather, defective cargo loading at the time of the disaster and on previous voyages, and defective realisation of replacement of the bottom structure in n°6 wing tanks.

3.14 The Second Bensussan Report dismissed the arguments of the defendants that it would be impossible to establish the decisive causes of the disaster, because of the many hypotheses which had been presented by various experts. The Report confirmed that bad welding carried out by INMA was one of the three "contributory" causes of the disaster, and specified the defective butt welding in the bottom longitudinals.

3.15 The Second Bensussan Report confirmed that the direction in which the fracture spread was from the wing tank (repaired by INMA) to the centre tank (not repaired by INMA). The Report also stated that marks on the edge of a piece taken from the sunken fore section of the TANIO (piece n°35), on which a metallurgic test had been carried out, were caused by repeated opening and closing of the fracture during its formation. These comments support the theory advanced by the IOPC Fund's experts that the fracture originated in the wing tank, and that the fracture at frame 131 was one of the first parts of the structure to fail before the total separation of the fore and aft sections of the TANIO.

3.16 INMA had maintained that the fracture spread from the bilge upwards along the shell plating; this theory was categorically rejected in the Second Bensussan Report as being in contradiction with the facts, since the First Bensussan Report had found that the fracture ran in a downward direction. The Second Bensussan Report stated that the horizontal bending of the hull would be insufficient to initiate a fracture in the bilge area.

3.17 None of the theories presented by the other defendants (SETP, Locafrance, Petromad and Bureau Véritas) received favourable comments in the Second Bensussan Report.

Decision Taken at the 16th Session of the Executive Committee

3.18 On the basis of the report presented by the Director (document FUND/EXC.16/3), the Executive Committee endorsed at its 16th session the Director's decision, taken after consultation with the representatives of the French Government, that the legal action in the Court of Brest should be maintained (document FUND/EXC.16/8, paragraph 3.2).

Developments Since the 16th Session of the Executive Committee

3.19 As was reported in paragraph 3.34 of document FUND/EXC.16/3, progress in the case over the years has been held up by a number of factors including the heavy work load of the Court in Brest, the complexity of the case and the time-consuming procedure of obtaining documentary evidence from the defendants. Most recently, delay was caused by a technical examination carried out at the request of the IOPC Fund and the French Government, and the need to reconvene the Expertise Judiciaire and to allow the parties to make submissions to it. When the Expertise Judiciaire finally submitted its Second Report in March 1986, the Court established, at the request of the IOPC Fund and the French Government, a strict timetable for further submissions and for the exchange of documents. This timetable has, to a large extent, been followed so far. Under the timetable, the oral hearing should take place in October 1987. It is expected that the Court will then decide the question of liability. The quantum of the claims will not be dealt with at this stage.

3.20 Late in 1986 and in 1987, all the defendants submitted lengthy pleadings to the Court, rejecting any liability. In March and July 1987 the IOPC Fund and the French Government, in their turn, submitted pleadings in response to the arguments put forward by the defendants. The positions of the parties can be summarised very briefly as follows.

General Positions

3.21 The defendants have maintained that it is not possible to establish the cause of the incident with absolute certainty. In addition, they argue that there are several contributory causes to the incident, and it is not possible to show which of them actually led to the disaster. On both these points, they invoke the reports of the Expertise Judiciaire. The defendants have also argued that there was no link of causation between the defective welding and the fracture that led to the incident.

3.22 The IOPC Fund and the French Government (the plaintiffs) have accepted that the Expertise Judiciaire did not establish with absolute certainty the exact location of the fracture which broke the TANIO, but they have pointed out that the Expertise Judiciaire took a firm position as to the defects of the welds at frame 131, where the Expertise Judiciaire located the initial fracture. The plaintiffs have also emphasised the position taken by the Expertise that the bad welding carried out by INMA was one of the

contributory causes of the incident, although it was not possible to establish the determining cause. In the view of the plaintiffs, the defects would have been discovered if there had been adequate procedures to inspect and check the repairs at INMA.

3.23 The plaintiffs have maintained that, under French jurisprudence, the fact that there are several contributory causes is not an obstacle to establishing the link of causation, provided that one of these causes has contributed to the damage (even if only aggravating it). In addition, it is not necessary, in their view, to establish the link of causation with absolute certainty since French jurisprudence imposes liability on a person who, deliberately or by negligence, causes an objectively dangerous situation, if there is sufficient presumption of a link of causation between the fault and the damage. In the view of the plaintiffs, it is impossible not to conclude that defective welding carried out on a tanker of more than 20 years of age would probably (if not certainly) have led to a situation which, from an objective point of view, created circumstances leading to the damage in question.

Positions in Respect of Individual Defendants

(a) Locafrance

3.24 Locafrance has stressed that it is only a financing society and that, according to the contract with the charterer, it is entitled, under French jurisprudence, to invoke exemption clauses in the contract with the charterers as to any liability for guarantees concerning the technical condition of the ship. In addition, Locafrance has maintained that since a thorough visual examination could not reveal the defects in the welding, such defective welding would not constitute fault or privity on its part. Locafrance has also argued that it had entrusted SFTP, a well-known subsidiary of the Worms Group, to supervise the repairs and Bureau Veritas to be responsible for the reclassification of the ship. In the view of Locafrance, it had taken all measures that could reasonably be expected of an owner not specialized in ship construction.

3.25 The plaintiffs have pointed out that the liability of Locafrance is based solely on the Civil Liability Convention; it would, therefore, not be open to Locafrance to invoke as against third parties any such exemption clauses in the contract. They have also maintained that Locafrance's defence is based on a wrong assumption, since it would have been possible to discover the defects in the welding by an appropriate verification carried out by the specialists to whom Locafrance had given the task of monitoring the repairs at INMA. In the view of the plaintiffs, Locafrance had blindly delegated the task of ensuring that the TANIO was in a navigable condition to entities which were not prepared to undertake this task. By not exercising a minimum control of the repairs, Locafrance had, in their view, acted in such a way as to deprive itself of the right of limitation of liability under the Civil Liability Convention.

(b) SFTP and Guardiola

3.26 Guardiola had been entrusted by the owner of the TANIO (Locafrance) with the monitoring of the organisation and surveillance of the repair work carried out at INMA. Guardiola, in its turn, had given this task to SFTP, which had sent one of its engineers to INMA. SFTP has made various, conflicting, statements on its obligations to Guardiola. These include an obligation to specify and supervise the execution of the repairs, an obligation to ensure that Bureau Veritas issued the requisite re-classification certificates, and a role only as co-ordinator between the shipyard, owner and classification society.

3.27 In the view of the plaintiffs, the above-mentioned engineer did not survey anything at all, but relied entirely on INMA and Bureau Veritas. SFTP's activities did not result in any report, which, in their view, shows the superficial character of the surveillance which was far from the mandate given to SFTP by Guardiola. The fact that SFTP did not fulfil its contractual obligations was - they have argued - one of the contributory causes of the damage.

3.28 Guardiola has maintained that it was merely a financing company and had, therefore, no responsibility for the operation of the TANIO; its role was only that of an intermediary between Locafrance and INMA by appointing SFTP, a company of good reputation specialised in the supervision of ship repairs.

(c) Petromad and SFTP

3.29 Petromad was the company responsible for the management of the TANIO. In the view of the plaintiffs, Petromad was thus responsible for ensuring that the crew was competent and sufficiently trained and informed.

3.30 The plaintiffs have maintained that the master of the TANIO had not been properly instructed as to the correct distribution of the cargo. The Expertise Judiciaire stated that repeated mistakes in the distribution of the cargo could have led to fatigue contributing to the fracture. In the view of the plaintiffs, the crew's insufficient training and information constituted, under international jurisprudence, fault or privity, which deprived the charterer of his right of limitation of liability under the 1957 Convention.

3.31 SFTP has rejected that the training and information of the crew had been insufficient. In addition, SFTP has argued that there was no evidence to prove that defective cargo loading had contributed to the fracture that broke the TANIO.

(d) Bureau Veritas

3.32 Bureau Veritas has maintained that it was never given the task of monitoring the repairs at the INMA shipyard and that it had acted correctly and in accordance with its regulations in this case of control of a simple reclassification.

3.33 In the view of the plaintiffs, it is not acceptable that Bureau Véritas, as a classification society, could consider an examination of the general condition of the ship as satisfactory, in respect of the structural integrity of the ship as a whole, without a detailed verification that the elements which constituted the general condition had been correctly brought together and welded. It has been pointed out by the plaintiffs that the position now taken by Bureau Véritas is in contradiction with a previous statement made by it that it had carried out the usual verification of the structural elements, especially the weld preparation, and that it had examined nine radiographic tests of the welding, made on its request, which did not show any defects. In the view of the plaintiffs, a classification guaranteeing the good general condition of the ship must include a thorough verification of elements such as welds which contribute to the structural integrity of the vessel. It has also been pointed out by the plaintiffs that Bureau Véritas' instructions to its own experts deal with welding procedures and the checking of welding (by x-rays and other non-destructive methods). The plaintiffs have maintained that, if the local representative of Bureau Véritas had followed these instructions, he could not have failed to discover the defects in the welding.

(e) INMA

3.34 INMA has admitted that the butt welding in the bottom longitudinals contained defects. However, INMA has maintained that such defects were inevitable, since the welding had been carried out on board the ship, in difficult conditions. In addition, INMA has stressed that defects had been proved only in respect of a very limited number of welds. In the opinion of INMA, the plaintiffs have not proved that the fracture which initiated the disaster was caused by a defective welding. Thus, in the view of INMA, the plaintiffs have not established the link between the defect and the damage. More recently INMA has argued that the bottom longitudinals, in which the defective welding was located, are not components of major importance to the structure. This argument was not included in any of INMA's submissions to the Expertise Judiciaire.

3.35 The plaintiffs, in reply, have argued that the defects were not inevitable. They have maintained that these defects did not result from accidental imperfections but from an ignorance of the necessary care in the preparation of the longitudinals prior to welding. The fact that it was difficult to carry out welding on board the ship should, in their view, have made INMA carry out a very thorough inspection to ensure that the welding had been carried out correctly; no thorough inspection was made. In addition, it has been pointed out by the plaintiffs that, although only a limited number of welds may have been defective, several defective welds were concentrated in the area where the Expertise Judiciaire located the initial fracture, thereby creating a weak zone. In the light of accepted theory and practice of ship construction, the plaintiffs have also rejected INMA's new argument that the bottom longitudinals were unimportant. As for INMA's statement on the link of causation, reference is made to the position of the plaintiffs as set out in paragraph 3.23 above.

(f) UK Club

3.36 The UK Club has maintained that it is involved in this case only as insurer of Locafrance, the registered owner of the TANIO. For this reason, the UK Club has argued that it would be entitled, under Article VII.8 of the Civil Liability Convention, to avail itself of the limit of liability prescribed in that Convention, irrespective of actual fault or privity of the owner. As for the question of fault or privity, the UK Club has taken the same position and invoked the same arguments as Locafrance.

3.37 The plaintiffs, in reply, have stressed that the UK Club has been sued in its capacity as insurer of defendants other than Locafrance. They have also pointed out that the UK Club has not responded to requests to disclose whether or not it actually insured Guardiola and Petromad at the time of the incident. The plaintiffs have drawn attention to the fact that Petromad was listed as a member of the UK Club in respect of the TANIO in the annual list of ships entered with the UK Club on 20 February 1980, ie only a few weeks before the incident occurred.

Financial Position of the Defendants

3.38 As reported at the 16th session of the Executive Committee, Locafrance is insured against liability for oil pollution damage under the Civil Liability Convention with the UK Club up to an aggregate amount of \$200 million. The same may apply to Petromad. Guardiola is in liquidation in Panama and it is unlikely that there will be any assets against which a judgement could be enforced. It appears that Guardiola was not insured against third party liability. It is possible that SFTP was insured, but since SFTP considered its role in the operations of the TANIO as very limited, it is unlikely that such insurance would cover its liability in this case. It is believed that Bureau Véritas has some insurance against third party liability, but it is unlikely that this insurance would be sufficient to cover a liability of the kind involved in this case. INMA's financial position is probably not very strong. It appears unlikely that INMA has any third party liability insurance that would cover any major amount in this case.

4 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and to take such decisions as it considers appropriate with regard to the recourse action in the Court of Brest.

* * *

ANNEX ISituation of Claims as at 1 August 1987

1 AGREED CLAIMS		<u>Agreed</u>	<u>Paid</u>
		FFr	FFr
French Government		326 921 937	208 134 552
Local Authorities in France	FFr		
- Côtes-du-Nord Département	2 410 595		
- Côtes-du-Nord 20 Communes	4 985 659		
- Finistère 7 Communes	<u>1 513 899</u>		
	8 910 153	8 910 153	5 468 892
Port Autonome du Havre		116 594	71 563
Association Interprofessionale des Victimes de la Marée Noire: 50 Members		4 452 214	2 732 674
4 Private Claimants		185 783	114 029
UK P & I Club			
Own Expenses	\$	FFr	
- British Oceanics	326 769.53		
- Underwater Security	14 384.77		
- Intersub	<u>560 579.12</u>		
	901 733.42	7 298 630	
Subrogated Claims	£		
- Comité des Assureurs Maritimes		47 000	
- State of Jersey	8 093.63	98 176	
- State of Guernsey	14 439.62	175 153	
- Hotelier	450.00	<u>5 458</u>	
		7 624 417	4 679 742
		<u>348 211 098</u>	<u>221 201 452</u>
2 CLAIMS MADE IN THE COURT BUT NOT PURSUED		FFr	
Association de Marins Pêcheurs		<u>500 000</u>	

ANNEX IIGrounds for Legal Action Taken by the IOPC Fund and the French Government Against the Shipowner and Other PartiesLocafrance

Locafrance, as registered owner of the TANIO, has strict liability for all pollution damage under Article III.1 of the Civil Liability Convention. The only question is whether its liability shall be unlimited under Article V.2. To put a ship in a seaworthy and navigable state is the shipowner's responsibility. Locafrance had personal responsibility to ensure the seaworthiness of the TANIO when it opted to own the ship and then charter out by bare-boat charterparty. Locafrance could not escape the fundamental obligation with regard to the seaworthiness of the TANIO by delegating the task of controlling such seaworthiness to third parties. Locafrance had to ensure, by a minimum control, that a proper procedure of supervision was in place and that such supervision was in fact properly effected. By not carrying out personally the minimum control required to ensure the effectiveness of the complex control delegation it had made, Locafrance committed an act of personal fault ("faute personnelle" as defined in French law), which deprives it of the privilege to limit its liability. It is noted that the concept of "faute personnelle" in French law is considerably wider than "actual fault or privity" in English law. French case law holds that the obligation to maintain a seaworthy ship is personal to the owner and that, where there is fault in that regard, it is a "faute personnelle" of the owner.

INMA

It is apparent from the experts' reports that the welding executed on the TANIO by INMA was badly done and did not conform with the standard and good practice as exercised by careful shipyards. INMA did not observe their contractual obligation to carry out the work in a proper manner. Moreover, INMA failed to check its work properly, and the defects in the work could have been recognised by a proper inspection at the yard. INMA's contractual negligence constitutes equally a negligence in tort involving its liability to third parties, victims of the pollution. There is no principle of limitation of liability applicable to INMA.

SFTP

SFTP was under a contractual obligation to define the extent of the repair work, to supervise the proper execution of the work and to check the results. The bad welding should have been apparent to an engineer if he had carried out diligent supervision and

inspection. Since such diligence was not exercised, SFTP is liable in negligence, notwithstanding any contractual exemption of responsibility which cannot, as a matter of law, be invoked against third parties. SFTP cannot limit its liability. SFTP was also responsible, under a contract signed with Petromad, for the technical management of the ship and, in this capacity, the same arguments regarding cargo distribution apply to them as to Petromad.

Guardiola

Guardiola undertook a contractual obligation to Locafrance to define the repair work to be done and check the execution of such work. It also had an obligation to put the ship into a seaworthy state apt for her intended service. Its failure to fulfil these fundamental obligations renders it liable in law to third parties, and also deprives it of any right to limit its liability under the 1957 Brussels Convention relating to the Limitation of the Liability of Owners of Sea-going Ships.

Bureau Véritas

The Rocquemont Report concludes that Bureau Véritas did not check the quality of the work locally, but left the inspection to the shipyard. Bureau Véritas fell short of its obligation to check the accomplishment of the repair work before giving the TANIO her class. It is therefore liable in tort. No principle of limitation of liability applies to Bureau Véritas.

Petromad

While the Master was undoubtedly liable for the unusual cargo distribution over a period of time, Petromad should have ensured that the Master was properly instructed concerning cargo distribution, and that he was ordered to stop the use of methods which eventually led to unacceptable stress levels in the hull. Either or both were clearly not done, and so Petromad is liable in negligence, which also denies it the right to limit its liability under the 1957 Convention.

UK Club

The UK Club has been sued as insurers of Petromad and Guardiola, on the basis of a right of direct action against an insurer where damage has been suffered in France, although it is not clear whether the UK Club insured the latter. It was felt desirable to sue the UK Club at that stage as a protective measure. It was hoped that discussion might lead to assurances being given by the UK Club which would make it possible to withdraw the action against it; no such assurances have been given.
