

CORLA Newsletter: Reflections on the court’s judgment in *Município de Mariana & Others v BHP Group (UK) Ltd. & BHP Group Limited*

On 14 November 2025, Mrs Justice O’Farrell DBE handed down her judgment in the liability phase of *Município de Mariana & Others v BHP Group (UK) Ltd. & BHP Group Limited*, (the “**Judgment**”) following a 5-month trial in the Technology and Construction Court running from October 2024 to March 2025 (the “**Trial**”). The Judgment represents a resounding win for the Claimants, finding BHP to be both strictly liable as a polluter and liable as a result of their own fault in causing Brazil’s worst ever environmental disaster: the collapse of the Fundão dam in 2015.

This article provides some background to the case, an overview of the Judgment’s findings, offers reflections on the Judgment’s significance, and discusses what is next in the proceedings to ensure that the claimants are properly compensated for their losses.

The full Judgment is available here: [Município de Mariana -v- BHP Group \(judgment and summary\) - Courts and Tribunals Judiciary](#).

The Background to the Case

The case concerns the collapse of the Fundão tailings dam near Mariana in Minas Gerais, Brazil on 5 November 2015. The collapse caused over 40 million cubic metres of mining waste to escape from the Germano mining complex, killing 19 people, destroying the nearby town of Bento Rodrigues and polluting more than 600km of waterways leading all the way to the Atlantic Ocean. The dam’s collapse is considered to be the worst environmental disaster in Brazil’s history, with many continuing to suffer from its devastating consequences. Pogust Goodhead represents over 600,000 claimants from the affected Rio Doce river basin and Atlantic coastal areas.

The principal issue for determination at the Trial concerned whether BHP should be held liable for the collapse, as discussed below.

The Court’s Substantive Findings

The claimants pursued three principal causes of action at Trial:

- (i) BHP are strictly liability as a polluter under the Brazilian Environmental Law;
- (ii) BHP are liable based on fault pursuant to the Brazilian Civil Code, owing to BHP’s negligence, imprudence and/or lack of skill; and
- (iii) BHP are liable based on fault pursuant to the Brazilian Corporate Law, owing to breaches of BHP’s duties to the community as a controlling shareholder.

BHP’s liability a polluter

The court found BHP strictly liable as a “polluter” in respect of damage caused by the collapse, pursuant to Articles 3(IV) and 14, paragraph 1 of the Brazilian Environmental Law. In addition to substantial disagreement on the proper interpretation of a “polluter” under Brazilian law, an important factual dispute concerned the fact that the dam’s legal owner was Samarco; a Brazilian company ultimately owned 50:50 by BHP and Vale S.A.. Consistent with other parent

company liability cases with which CORLA members will be familiar, the Defendants contended that Samarco was a “non-operated joint venture” company and entirely independent of BHP. The court rejected this contention, instead finding that “*from its corporate objectives through to operational management and activities, in practice, [Samarco] was controlled and operated by BHP and Vale*”,^{1,2} who were together the “*ultimate owners, controlling shareholders and directing mind of Samarco*”.³

The court was persuaded by the voluminous evidence presented at Trial, which demonstrated the true extent of BHP’s involvement in Samarco. In particular, the Judgment places reliance on: (i) the fact that despite a complex corporate structure, BHP treated Samarco as part of the BHP Group;⁴ (ii) provisions of the Samarco Shareholders Agreement which guaranteed BHP and Vale the ability to jointly control Samarco and appoint members to Samarco’s board, and BHP indeed exercised this controlling power;⁵ (iii) BHP’s assumption of risk control and audit responsibilities relating to Samarco, and specifically relating to the safety of Samarco’s dams;⁶ (iv) BHP’s heavy involvement in key decisions relating to important Samarco projects,⁷ and financial decisions such as dividend approvals;⁸ and (v) BHP’s substantial financial investment in, and benefit from, Samarco as an asset.⁹

As such, BHP were found to be responsible as polluters for the mining activities which caused the collapse.

BHP’s fault-based liability

The court also found BHP to be liable based on fault for damages caused by the collapse, pursuant to Articles 186 and 927, head paragraph, of the Brazilian Civil Code. In respect of its mining activities, BHP were found to be under a legal duty to avoid harm caused by negligence, imprudence and/or lack of skill, and to have breached this legal duty. This in turn resulted in the development of inadequate conditions at the dam which were direct and immediate causes of its collapse.¹⁰

A key issue between the parties was the foreseeability of the collapse for BHP. Faced with substantial geotechnical expert, witness and documentary evidence, the court found that BHP knew or should have known about, amongst other things: (i) the dam’s persistent and serious issues of insufficient internal drainage;¹¹ (ii) repeated departures from the dam’s original design

¹ Judgment, para. 522.

² For a period of time, Vale S.A. were Part 20 defendants in the proceedings. BHP filed a Notice of Discontinuance in respect of the Part 20 Claim in July 2024, at which time it was publicly announced that BHP and Vale had reached an agreement to each pay 50% of any amounts which BHP may ultimately be ordered to pay to the claimants in these proceedings.

³ Judgment, para. 524.

⁴ Judgment, paras. 407, 524.

⁵ Judgment, para. 431, 525-526.

⁶ Judgment, para. 485, 527.

⁷ Judgment, para. 508, 529.

⁸ Judgment, para. 528.

⁹ Judgment, para. 530.

¹⁰ Judgment, paras. 801, 806, 807.

¹¹ Judgment, para. 663, 803.

(including violations of minimum “beach width” requirements);¹² (iii) the absence of any proper stability evaluation for the dam following a major alteration to its original geometry¹³ (the Judgment describes this as an “*obvious and serious omission*”),¹⁴ and (iv) several serious seepage, cracking and movement incidents at the dam, which indicated that the dam had become unstable.¹⁵ Instead, the Judge found that BHP’s risk management framework, whilst “*careful, comprehensive and effective*” in its design, was not properly implemented in relation to the dam. Aspects of the risk assessments carried out by BHP were “*obviously deficient*” and “*unjustifiable on any objective basis*”.¹⁶

The claimants’ cause of action under the Corporate Law was unsuccessful, as the court found that BHP owed no duties to the wider community under that legislation.

Other issues determined in the Judgment

In addition to assessing the liability causes of action, the Trial also concerned a number of freestanding issues arising from BHP’s defence.

Firstly, on limitation, the court found that all of the claimants’ claims were brought in time; criminal proceedings in Brazil arising from the dam’s collapse were held to have postponed limitation such that the claimants benefit from a limitation period running until at least September 2029.

Secondly, the court assessed whether any claimants have waived their claims by virtue of entering into compensation agreements in Brazil containing waiver clauses. By reference to waiver clauses contained in a sample set of agreements examined at Trial, the court found that the effect of waiver provisions will depend on the individual terms of the agreements and the circumstances in which they were signed.

Thirdly, the court considered whether the municipality claimants had standing and/or capacity to bring their claims in England and Wales (“E&W”). The court held that the act of pursuing their claims in the courts of E&W does not offend Brazil’s Constitution and there is no other impediment to a municipality commencing proceedings here. The municipality claimants can therefore continue to litigate in the E&W courts.

Reflections on the Judgment

First and foremost, for the over 600,000 claimants who continue to bear the consequences of the dam’s collapse, the Judgment is a huge step towards achieving justice. It arrives over 10 years after the dam’s collapse, approximately 7 years into the E&W litigation, and against a backdrop of several prior civil and criminal actions Brazil arising from the collapse. Despite this, the Judgment represents the first time that any company has been held legally responsible for the dam’s collapse. The fact that the court’s finding of responsibility is underpinned not only by strict liability under Brazil’s special environmental law regime, but also by fault on the

¹² Judgment, paras. 664-669, 803.

¹³ Judgment, paras. 670-678, 803.

¹⁴ Judgment, para. 673.

¹⁵ Judgment, para. 803.

¹⁶ Judgment, para. 722.

part of BHP, is of even greater significance. For the claimants whose long wait for compensation continues, the significance of a declaration from the court that the collapse was avoidable, and recognition that there was culpable wrongdoing on the part of BHP, cannot be underestimated.

As to its wider impact on the legal landscape, the Judgment's direct precedential value in E&W may be limited given that its findings are based on Brazilian law; findings of foreign law are treated as questions of fact in E&W. Despite this, litigators focused on environmental and corporate accountability actions can draw confidence from the general message this Judgment sends: that where necessary, the E&W courts stand ready to engage in holding large corporate actors responsible for their wrongdoing, even where the most devastating consequences of this wrongdoing are felt abroad, and even where corporate structures at first glance may appear to distance parent companies from their subsidiaries.

The Judgment is also a clear demonstration of the willingness and ability of the E&W courts to tackle cases of exceptional scale and complexity. Once struck out as “*not merely challenging but irredeemably unmanageable*”¹⁷ (a first instance finding which was overturned on appeal),¹⁸ the case was able to proceed to Trial as a result of the court's readiness to adapt the usual procedural rules for litigation of this nature. This included everything from timetable modifications to novel approaches to disclosure and hearsay evidence requirements.

The case also required extensive engagement with foreign law, further adding to its complexity for the court. Questions on the interpretation and application of Brazilian law were the central issues at Trial, determined by reference to written and oral expert evidence from 6 Brazilian law experts. The nature of the evidence presented at Trial placed further demands on the court; in addition to voluminous documentary evidence, the court was more unusually asked to accommodate live translation of oral expert evidence given at Trial, and to engage with hearsay evidence from depositions given by BHP individuals out of the jurisdiction in the US.¹⁹ Indeed, Mrs Justice O'Farrell DBE closed the Trial by acknowledging the challenges that litigation of this scale and nature can pose, but with a nod to the ability of the E&W courts to navigate these: “*the case was identified as one that was challenging but achievable. We've achieved it!*”.

What's next for the case?

The Defendants indicated their intention to appeal the court's decision on the day the Judgment was handed down. Mrs Justice O'Farrell DBE has refused permission to appeal, and it remains to be seen if such permission will be granted by the Court of Appeal.

¹⁷ See *Município de Mariana & Others v BHP Group (UK) Ltd. & BHP Group Limited* [2020] EWHC 2930 (TCC), para. 104.

¹⁸ See the Court of Appeal's Judgment: *Município de Mariana & Others v BHP Group (UK) Ltd. & BHP Group Limited* [2022] EWCA Civ 951

¹⁹ The Claimants obtained this discovery by applying to the US Courts under Section 1782 of Title 28 of the United States Code. This provision allows for US District Court to order an individual to give testimony or statement, or produce documents, for use in foreign proceedings.

At present, a second trial in the proceedings to address the causation and quantum of losses suffered by the claimants is scheduled to take place in the Technology and Construction Court in October 2026. The parties are proceeding on the basis that the issues will be determined at least in part by reference to a number of lead cases representing each of the claimant cohorts (comprising municipalities, faith-based institutions, utilities companies, businesses, individuals and indigenous and quilombola claimants).