Dam disaster judge orders defendant to release private documents

BREAKING NEWS – TIME SENSITIVE

The order followed a morning of "explosive evidence", suggesting that defendant BHP was aware that the Fundão dam was at risk of collapse.

The ongoing dispute over the 2015 Mariana dam disaster (*pictured*), in which the collapse of the Fundão tailings dam released millions of tonnes of muddy toxic waste, causing 19 deaths and severely impacting the lives, livelihoods and wellbeing of almost 700,000 people, took a dramatic twist in the High Court in London today (19 April) when presiding judge **Mrs Justice O'Farrell** ordered defendant **BHP Group** to hand over a trove of documents, including CEO Mike Henry's employment contract at the time of the collapse.

BHP has maintained it was a passive shareholder in **Samarco**, the mine and dam operator co-owned with Brazilian mining company **Vale**, with the company claiming that it had no role in the day-to-day operations. However, lawyers successfully argued that Henry's employment contract, detailing his responsibilities and performance metrics during the period, would shed light on the incentives and priorities BHP executives faced concerning Samarco's safety and operations. Henry was a member of BHP's executive leadership team at the time of the disaster.

The Court also heard potentially damning evidence against BHP's claims of limited involvement; former BHP executive Marcus Randolph, who served on Samarco's board revealed emails suggesting BHP was deeply involved in the associated mine's operations and aware of potential dam safety issues. In one email, sent the day after the disaster to BHP's then-CEO Andrew Mackenzie, Randolph clarified that BHP had requested an independent report into the safety of the mine, three or four years earlier than the date given to Samarco. In his evidence, Randolph said: "I was a big part of Samarco at the time and we pushed dam safety very hard. Following a site visit, I sent a trip note to Samarco that contained extensive commentary about dam risk. If I can help in any way, please give me a call. I sent a number of letters to the MD requesting reviews, etc of the dam and remember events pretty well. I believe there were also some documents in the BHPB risk register and our Board/committees had discussions about the risk."

Further bolstering the claimants' arguments, the Court learned that BHP's '1SAP' risk management system contained a specific code for the 'Failure of Samarco Tailing Dam', suggesting that BHP was aware of potential dam issues before the collapse.

In a statement published online earlier today, **Tom Goodhead**, CEO and managing partner of **Pogust Goodhead**, which is representing the victims, wrote: “The new evidence revealed in court today appears to torpedo BHP’s public position that they were mere shareholders in Samarco.”

Goodhead continued: “In 2015 BHP promised that the truth about the dam collapse would come out. It has spent the intervening eight and a half years denying fair repair and recovery to the victims, our clients, whose lives were devastated, while spending millions in the courts frustrating attempts to get at the truth. The explosive evidence revealed in court today suggests the company was aware of issues with the dam before its collapse.”

In a post on *X/Twitter*, Goodhead added: “It appears that BHP-affiliated individuals may have been incentivised in relation to Samarco production and operation – including incentives to cut costs.”

The case continues.

In *Município de Mariana and Others v BHP Group*, the claimants are represented by **Alain Choo-Choy KC** of **One Essex Court**, **Roger Mallalieu KC** and **Pippa Manby** of **4 New Square**, **Anisa Kassamali** and **Russell Hopkins** of **Temple Garden Chambers**, **Nicholas Harrison** and **Jonathan McDonagh** of **Serle Court**, **Grace Ferrier** of **Essex Court Chambers** and **Antonia Eklund** of **Blackstone Chambers**, instructed by Pogust Goodhead.

BHP is represented by **Shaheed Fatima KC** and **Victoria Windle KC** of Blackstone Chambers, and **Nicholas Sloboda**, **Patricia Burns** and **Maximilian Schlote** of One Essex Court, instructed by **Slaughter and May**.