

BHP fends off \$9b English lawsuit over Samarco disaster

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Nov 10, 2020 – 4.03am

London | BHP defeated an attempt to start a £5 billion (\$9 billion) [class action](#) lawsuit in England related to the 2015 Samarco dam disaster in Brazil with the judge ruling that running parallel lawsuits in two countries would become a "white elephant" of cost and complexity.

The lawyers representing more than 200,000 Brazilian claimants said they would immediately appeal the "fundamentally flawed judgment" and were "overwhelmingly confident" they could get it overturned.

"BHP have succeeded, once again, in delaying the provision of full redress for the victims of the [worst environmental disaster](#) in Brazilian history," said Tom Goodhead, managing partner at class-action lawyers PGMBM. "We will continue to fight ceaselessly, for however long it takes."

BHP said in a statement that the court decision was "a strong endorsement of our position that these proceedings were unnecessary because they duplicated matters already covered" by the company's own compensation mechanism and the Brazilian courts.



The Samarco dam failure killed 19 people and destroyed several villages. **Steve Yolen**

The lawsuit was brought in England because the victims of the Fundao tailings dam collapse say they're getting only slow and inadequate redress via the Brazilian courts and from the Renova Foundation, which BHP and its 50-50 Samarco joint venture partner Vale set up to repair damage and disburse compensation.

Justice Turner, of the Liverpool High Court, concluded it would be "alarming" to have an English case proceed in parallel with the Brazilian court processes, especially as they sometimes involved the same claimants and might deliver irreconcilable verdicts.

"Regardless of the level of problems alleged to face the claimants in Brazil, these will not be alleviated by the opening up of a second front in England, where any proceedings would be expensive, almost interminable, unfocused, unpredictable and unmanageable," he said.

'Flawed optimism'

The judgment said PGMBM's move to pursue simultaneous claims in two countries "is an initiative the consequences of which, if unchecked, would foist upon the English courts the largest white elephant in the history of group actions".

The judge also suggested that even though the claimants may have genuine concerns and have suffered real hardship, they were unlikely to get a fairer or more just outcome in England than in Brazil.

"Whatever the source of the claimants' collective enthusiasm for the prospect of litigation in England . . . I consider their collective optimism to be deeply and irredeemably flawed," he wrote.

The disaster killed 19 people and left hundreds homeless, as well as wreaking environmental and infrastructure damage that extended across two states. Within weeks, a Brazilian class action was launched that ultimately won a settlement of 20 billion Brazilian reals (\$5.2 billion).

In response, BHP and Vale set up the Renova Foundation to remediate damage and compensate affected individuals, which has spent 10 billion reals so far.

A second, 155 billion-real lawsuit was later launched but is on hold as negotiations continue. An appeals court overturned the original settlement as well, but it was reconstituted so as to support Renova's work.

Big business, churches, municipalities and utility companies were not covered by the original settlement. Some 58 of the Brazilian litigants in the English case fall into one

of these categories, but 13 of them are also pursuing individual claims in the Brazilian courts.

Justice Turner said a court managing the separate but overlapping lawsuits would find it like "trying to build a house of cards in a wind tunnel", with Brazilian and English judges "constantly stepping on each other's toes".

The plaintiffs argued that an English court would likely move more quickly than Brazil's, but the judge said problems of translating reams of documents, procuring witnesses and applying unfamiliar laws would "hobble" the English process.

Meanwhile, he said, 96 per cent of the claimants in the English case would be covered by a Brazilian court's "rough justice" process, now underway, that was trying to streamline and speed up claims.

The Brazilian judge "is intolerant of delay and his approach is a cause for confidence that the impetus he is giving to the process will continue", the English judge wrote.

Justice Turner also responded to criticisms of Renova by saying its task was so huge that "it would be astonishing if, along the way, problems, even serious problems, were not to arise in managing the scheme in a fully coherent and effective way".

He also noted Renova may find it difficult to meet claims in a ready and open fashion while also guarding against fraudulent claims, and an English court case "would not provide a panacea" to these administrative problems.