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Case No: HT-2022-000304
Case No: HT-2023-000058

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 19/01/2026

Before :

MRS JUSTICE O'FARRELL DBE

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Between :

MUNICÍPIO DE MARIANA
and the Claimants identified in the Schedules to the Claim Forms **Claimants**

- and -

(1) BHP GROUP (UK) LTD
(formerly BHP BILLITON PLC and thereafter BHP GROUP PLC)

(2) BHP GROUP LIMITED **Defendants**

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Alain Choo-Choy KC, Andrew Fulton KC, Jonathan McDonagh, Russell Hopkins, Grace Ferrier, Antonia Eklund and Anisa Kassamali (instructed by **PGMBM LAW LTD t/a Pogust Goodhead**) for the **Claimants**

Shaheed Fatima KC, Nicholas Sloboda KC, Oliver Butler, Daniel Burgess, Tamara Kagan, Veena Srirangam, Jade Fowler and Michael Kotrly (instructed by **Slaughter and May**) for the **Defendants**

Hearing date: 17th December 2025

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 19 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice O'Farrell:

1. On 14 November 2025 the court handed down judgment in the Stage 1 Trial of this matter [2025] EWHC 3001 (TCC) ("the Judgment").

2. For the reasons set out in the Judgment, the court's key findings were as follows:

   i) The defendants are strictly liable as "polluters" in respect of damage caused by the collapse pursuant to Articles 3(IV) and 14, paragraph 1 of the Environmental Law.

   ii) The alternative strict liability claim pursuant to Article 927, sole paragraph of the Civil Code does not arise.

   iii) The defendants are liable based on fault in respect of damage caused by the collapse, pursuant to Article 186 of the Civil Code.

   iv) The defendants are not liable in respect of damage caused by the collapse pursuant to Articles 116 and/or 117 of the Corporate Law.

   v) The claim forms issued in the proceedings before the court contained sufficient information, as required by Brazilian Law, to stop time running for the purpose of limitation/prescription.

   vi) Pursuant to Article 200 of the Civil Code, the criminal investigation and proceedings that were commenced in Brazil in November 2015 postponed the start of the prescription period until at least 2024.

   vii) The ADIC CPA filed against Samarco on 17 November 2015 interrupted prescription in respect of all claims arising out of the collapse but such interruption terminated on 24 September 2018.

   viii) The ambit of the thesis in Theme 999 is limited to public environmental claims, that is, claims for relief regarding the restoration of damage to the environment. It does not extend to claims for individual or collective compensation arising out of damage to the environment, which remain subject to the general rules of prescription.

   ix) The prescription period for the claims is five years pursuant to Article 27 of the Consumer Defence Code.

   x) The claims by the Municipalities and Utilities are subject to a five-year prescription period pursuant to the 1932 Decree.

   xi) The Term of Commitment document entered into by Samarco, BHP Brasil and Vale on 26 October 2018 is of no assistance.

   xii) The general rule is that the prescription period starts from the moment at which the injury to the right occurs but subject to the characterisation of the injury; a distinction must be drawn between a single harmful event, periodic violations of right, and continuous violation.

xiii) Certain claimants may be entitled to extended prescription periods, by reference to (a) filing of protests in Brazil, (b) lack of capacity and/or (c) their date of knowledge. It would be a matter for the court, in each case, to determine these issues on the facts.

xiv) The settlement agreements are regulated by the general principles of contractual interpretation contained in the Civil Code. The Consumer Defence Code does not apply to the settlement agreements because there is no underlying consumer relationship between the parties and the settlement agreements are not consumer contracts.

xv) The court has determined the issues of construction and principle arising in respect of the sample settlement agreements.

xvi) There is no constitutional impediment by way of incapacity for the Municipalities to bring proceedings in this jurisdiction and they have standing in these proceedings.

3. This is the Consequentials Hearing following hand down of the Judgment. The matters that arise for determination by the court concern:

i) the claimants' application for costs, including whether any immediate order should be made, the scope of any costs order, and any reduction for issues on which the claimants lost;

ii) the claimants' application for a payment on account of costs;

iii) the claimants' application for pre-judgment interest on costs;

iv) the claimants' application for an order that there should be a detailed assessment of costs forthwith;

v) the defendants' application for permission to appeal.

Costs

4. The claimants' position is that they are the successful parties and, as such, seek an order that the defendants pay their costs of the whole proceedings up to conclusion of the Stage 1 Trial, such costs to be subject to a detailed assessment on the standard basis if not agreed. The claimants' costs up to conclusion of the Stage 1 Trial are £189 million and a payment on account of such costs is sought in the sum of £113.5 million, together with pre-judgment interest.

5. The claimants rely on the first witness statement of Alicia Alinia of the claimants' solicitors dated 9 December 2025 and her second witness statement dated 15 December 2025.

6. The defendants' position is that no immediate order in respect of costs should be made until after the Stage 2 Trial, when the question of overall success will be much clearer. If, contrary to their primary case, any order for costs is made, such costs must be limited to the costs of the Stage 1 Trial, there should be a percentage reduction to reflect the

parties' relative success and failure on issues, the level of any payment on account is outrageously high and there is no entitlement to pre-judgment interest on costs.

7. The defendants rely on the 28th witness statement of Efstathios Michael of the defendants' solicitors dated 12 December 2025.

Applicable costs principles

8. The court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid: CPR 44.2(1).

9. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, although the court may make a different order: CPR 44.2(2).

10. CPR 44.2(4) provides that in deciding what (if any) order to make about costs, the court will have regard to all the circumstances, including:

    (a) the conduct of all the parties; and

    (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful.

11. CPR 44.2(5) provides that the conduct of the parties includes:

    (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

    (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

    (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

12. The court may make an issue-based costs order but, before doing so, will consider whether it is practicable to make an order limiting the costs payable to a proportion of the overall costs: CPR 44.2(6) & (7).

13. Where there is a split trial, the court is entitled to exercise its discretion to make an immediate order for the payment of costs in respect of the liability trial but may defer the issue of those costs until the final outcome of the litigation, especially if it is unclear whether the successful party will recover more than nominal damages: *Weill v Mean Fiddler Holdings Ltd* [2003] EWCA Civ 1058, at [31] to [34].

14. However, as a general rule, costs should follow the issue, regardless of when the issue is determined, particularly in complex disputes, to encourage the parties to adopt a proportionate approach to the litigation by focussing on the significant and meritorious points: *Langer v McKeown* [2021] EWCA Civ 1792 at [36]-[38]; *Illiquidx Ltd v Altana Wealth Ltd* [2025] EWHC 1566 (Ch) per Rajah J at [8].

15. The fact that a party has not won on every issue is not, of itself, a reason for depriving that party of part of its costs. In the absence of unreasonable conduct in pursuing or resisting an issue, the general rule is that the successful party should have their costs

and should only suffer a reduction to the extent that the costs were increased by the taking of the issue on which they failed: *Sharp v Blank* [2020] EWHC 1870 (Ch) per Sir Alistair Norris at [7](a)-(g).

Timing and scope of costs order

16. In this case, the claimants have obtained substantial findings of fact and law in their favour against the defendants on key issues of liability. Although there is no certainty as to whether, or to what extent, the Judgment will ultimately result in substantial damages for any specific claimant or group of claimants, the issues determined by the court were identified as the significant issues of liability raised by the claimants and the defendants. In those circumstances, it is appropriate for the court to make an order in respect of the Stage 1 Trial costs.

17. For the reasons set out in the Judgment, the court found in the claimants' favour on key issues of liability, namely: strict liability under the Environmental Law; alternatively, fault-based liability under the Civil Code; limitation/prescription; and standing/capacity of the Municipalities. Therefore, the claimants should be regarded as the successful party in the Stage 1 Trial and, as a matter of principle, are entitled to recover their costs against the defendants.

18. The scope of the costs order is limited to the costs of, and incidental to, the Stage 1 Trial. There is no principled basis on which the court should make an order at this stage in favour of the claimants extending to the overall costs of the litigation to date. That would assume ultimate success in respect of all, or most, of the claimants in circumstances where the claimants have not adduced any evidence from, and the court has not considered, any individual or group claims for damages. Mr Choo-Choy KC, leading counsel for the claimants, submits that the costs of the proceedings, including preparing pleadings by each claimant or group of claimants, were necessary pre-requisites for the claims to go ahead. That is true but it does not follow that the claimants have established an entitlement to the costs of such exercises. Any entitlement to recover the general costs of the claims will be subject to the outcome of the overall litigation.

Percentage reduction

19. Mr Sloboda KC, leading counsel for the defendants, submits that any order as to costs should reflect the claimants' loss and the defendants' success in respect of particular issues determined in the Stage 1 Trial, namely: (i) Article 927 (sole paragraph); (ii) Articles 116 and 117 of the Corporate Law; (iii) releases/settlements; and (iv) post-collapse conduct.

20. The claimants lost the issue of strict liability based on Article 927 (sole paragraph) of the Civil Code. This was advanced as an alternative to strict liability under the Environmental Law. Having succeeded on the Environmental Law basis of claim, it was unnecessary for them to succeed under Article 927 (sole paragraph). However, the court rejected this alternative claim as not applicable, regardless of the outcome of the Environmental Law claim. It is not necessary for the defendants to show that it was unreasonable for the claimants to pursue this alternative. It is sufficient that this was a discrete issue on which Brazilian legal expert evidence was adduced by both sides,

relying on bodies of case law and academic law materials that would not otherwise have been necessary, occupying approximately one day of cross-examination.

21. The claimants failed in establishing any liability under Articles 116 and 117 of the Corporate Law. This was advanced as an alternative basis for fault-based liability under the Civil Code. Having succeeded on strict liability under the Environmental Law and, in the alternative, on fault-based liability under the Civil Code, it was unnecessary for the claimants to succeed under the Corporate Law. However, the court rejected this alternative claim on its merits. It is acknowledged that the defendants relied on certain aspects of the Corporate Law by way of defence to the Civil Code claims and that those defences failed. But that formed a minor part of the substantive Corporate Law issues addressed by the experts in their written reports, which required a week of oral evidence at the trial. On the key issue as to whether there was any independent cause of action under the Corporate Law, the defendants were successful.

22. The outcome of the issues concerning waivers and releases (for costs purposes) is not straightforward. The court was asked to determine certain questions of principle and construction in respect of sample settlement agreements/releases. It was common ground that the pleaded disputes concerning validity, enforceability and scope of individual agreements/releases could not be resolved finally until the Stage 2 Trial. However, the defendants succeeded on specific issues, such as the non-applicability of the Consumer Defence Code and strong (but rebuttable) presumptions in the defendants' favour regarding the construction and enforceability of releases. These matters were dealt with in the expert reports and occupied approximately one day of cross-examination.

23. I discount the issue of post-collapse conduct as relevant to the question of any costs order. This pleaded point by the claimants was relied on as an additional allegation of liability but, as for a number of other peripheral points on both sides, the court did not consider it necessary or helpful to deal with it in the Judgment. Almost no time was spent on it at the hearing and it is negligible in terms of the costs incurred in respect of the Stage 1 Trial.

24. Having considered the time and effort taken by the above issues in pleadings, reports, oral evidence and submissions, my view is that a fair and proportionate reduction to the claimants' recoverable costs of the Stage 1 Trial would be 10%.

25. Therefore, I determine that the defendants should pay 90% of the claimants' costs of the Stage 1 Trial.

Basis of assessment

26. It is agreed that the claimants' costs should be subject to a detailed assessment on the standard basis.

Payment on account of costs

27. The claimants seek to recover costs that total approximately £189 million. The claimants seeks a payment on account of their costs of 60%, a sum of £113.5 million.

28. The defendants accept that, if the court decides that a costs order in respect of the Stage 1 Trial should not be deferred, the claimants are entitled to a reasonable amount as a payment on account. But they submit that the amount is shockingly excessive (the claimants' costs are nearly twice the defendants' costs) and the claimants have produced inadequate evidence in support of the costs claimed.

29. CPR 44.2(8) provides that where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

30. Where the amount of costs is to be assessed on the standard basis:

    i) the court will only allow costs which have been reasonably incurred and are reasonable in amount, resolving any doubt in favour of the paying party: CPR 44.3(1)&(2); and

    ii) the court will only allow costs which are proportionate to the matters in issue: CPR 44.3(2).

31. In assessing the reasonableness of the incidence and amount of the costs incurred, the court will have regard to all the circumstances, including the conduct of the parties, the value of the claim, the importance of the matter to the parties, the complexity of the issue, and the skill, time and effort spent on the litigation: CPR 44.4.

32. The court has discretion as to the amount of any order on account of costs. What amounts to a reasonable sum will depend on all the circumstances of the case, taking into account factors such as those identified in *Excalibur Ventures v Texas Keystone* [2015] EWHC 566 (Comm) per Clarke LJ:

> "[23] What is a reasonable amount will depend on the circumstances, the chief of which is that there will, by definition, have been no detailed assessment and thus an element of uncertainty, the extent of which may differ widely from case to case as to what will be allowed on detailed assessment. Any sum will have to be an estimate. A reasonable sum would often be one that was an estimate of the likely level of recovery subject, as the costs claimants accept, to an appropriate margin to allow for error in the estimation. This can be done by taking the lowest figure in a likely range or making a deduction from a single estimated figure or perhaps from the lowest figure in the range if the range itself is not very broad.
>
> [24] In determining whether to order any payment and its amount, account needs to be taken of all relevant factors including the likelihood (if it can be assessed) of the claimants being awarded the costs that they seek or a lesser and if so what proportion of them; the difficulty, if any, that may be faced in recovering those costs; the likelihood of a successful appeal; the means of the parties; the imminence of any assessment; any relevant delay and whether the paying party will have any difficulty in recovery in the case of any overpayment."

33. In this case, there has been no costs budgeting for the Stage 1 Trial (although costs budgets have been ordered for the Stage 2 Trial). The statement of costs prepared by the claimants contains a very high-level overview of the general categories and amounts incurred. It is at Annex 1 to Ms Alinia's first witness statement and comprises:

    i) Profit costs – UK fee earners: £73,121,365;

    ii) Profit costs – Brazil fee earners: £73,008,751;

    iii) Profit costs – walk in centre and call centre fee earners: £44,056,706;

    iv) Counsel fees: £14,021,945;

    v) Disbursements: £8,865,394.

34. From those items, a sum of approximately £24 million has been deducted for costs incurred during the period 2019 to 2022 to ensure that no jurisdictional issue costs are included.

35. Ms Alinia explains in her first witness statement that the total of £189 million excludes specific categories of costs, including those identified as relating to the jurisdictional challenges, interlocutory costs orders not in favour of the claimants, and the Stage 2 costs.

36. The rates, hours and total sums are tabulated for each fee earner for the period from 2018 to 2025 but there is no link to the tasks carried out by those individuals or the dates on which work was carried out. There is a table setting out the total profit costs incurred in each month from 2018 to 2025 but they are not linked to individual fee earners or workstreams. The fees for counsel are identified as lump sums for each individual for the whole period up to 2025. There is a breakdown of disbursements with brief descriptions against each item, including the fees for each expert witness.

37. Annex 2 to Ms Alinia's first witness statement contains a summary of the workstreams underlying Pogust Goodhead's profit costs. A description is provided for various workstreams throughout the period 2018 to 2025 but they are at a very high level and not cross-referenced to the individuals or the sums set out in Annex 1. This presents great difficulty for the court in ascertaining the costs associated with any phase of the litigation, particularly the rates and hours claimed as profit costs in respect of any identified element of the work.

38. I start by acknowledging that this is very complex litigation, it has required dedicated work by many lawyers and experts for over 7 years and there have been significant challenges for the disparate groups of claimants, many of whom live in rural areas of Brazil, in pursuing these claims in this jurisdiction. Notwithstanding those difficulties, the costs are extraordinarily high and the level of detail provided very limited. It is noted that the costs will be subject to a detailed assessment in due course but the paucity of information available to the court at this stage indicates that a very cautious approach should be taken to the broad-brush assessment of the likely level of recovery of these costs for the purpose of determining a payment on account.

39. In his 28th witness statement, Mr Michael draws a comparison between the level of the claimants' costs of £189 million and the level of the defendants' costs of £125 million prior to any reduction (now slightly higher) for the Stage 1 Trial, despite the defendants bearing the greater burden of disclosure and factual witness evidence. I accept that the claimants have been required to review such disclosure and evidence; further they have been required to carry out their own investigations in various jurisdictions to obtain relevant evidence. Nonetheless, there is a huge disparity between the costs incurred on each side. More significantly, the overall level of costs raises concern as to the reasonableness and proportionality of the same.

40. The claimants' evidence indicates that substantial costs have been incurred in signing up the claimants to these proceedings, processing claimant details and taking instructions. Annex 1 and Annex 2 demonstrate that the cost of these operations is £44 million (walk-in centre and call centre fee costs) plus £73 million (Brazilian legal teams undertaking sign-up work and legal advice). I do not consider that these costs are recoverable as part of the Stage 1 Trial costs. Before considering any questions of reasonableness and proportionality, it would be necessary to separate the sign-up and other collateral costs from subsequent legal advice and assistance - see: *Motto v Trafigura Ltd* [2011] EWCA Civ 1150 at [104]-[114]; *Weaver v British Airways plc* [2021] EWHC 217 per Saini J at [41]-[51]. But, if recoverable at all, they form part of the costs of the overall proceedings, rather than the Stage 1 Trial.

41. If those costs (less a proportion of the costs incurred between 2019 and 2022 which are not claimed and have already been deducted by the claimants) are removed from the total, the claimants' costs of the Stage 1 Trial are reduced to approximately £87 million. I accept the defendants' submission that the disbursements and profit costs should also be reduced to strip out costs concerned with funding and insurer issues but the suggestion of 30% seems excessive. A review of the disbursement items in Annex 1, indicates that a sum in the region of £3 million would be justified as itemised expert fees and logistics costs (such as translation/transcription services and the electronic database). I consider that a more modest reduction of £7 million reflects the balance of the disbursements and an allowance for profit costs associated with the funding and insurer issues. That gives a total of £80 million. As set out above, the claimants would be entitled to 90% of those costs, a sum of approximately £72 million. Adopting a cautious approach to determination of the payment on account, pending a detailed assessment, 60% of this figure gives a sum of about £43 million.

42. Taking the above matters into account, I consider that a reasonable sum on account of costs is £43 million.

Stay

43. CPR 44.7 provides that a party must comply with an order for the payment of costs within 14 days of the judgment or order, or such other date as the court may specify.

44. CPR 52.16 provides that unless the appeal court or the lower court orders otherwise, an appeal shall not operate as a stay of any order or decision of the lower court. The court has an inherent power to stay its order until the Court of Appeal has disposed of an appeal or application for permission to appeal.

45. In *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065, Clarke LJ stated at [22] that whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or both parties if it grants or refuses a stay.

46. In this case, the parties are agreed that any order for a payment on account should be stayed pending determination of the application for permission to appeal by this court or the Court of Appeal. On that basis, the court will order that the defendants should pay the claimants the sum of £43 million on account of costs of the Stage 1 Trial, such payment to be made within 30 days of the date on which any application for permission is determined or, if permission is granted, any appeal is finally determined.

Interest on costs

47. The claimants seek interest at the commercial rate of 1% above base rate on the totality of their costs as from 1 August 2023, the date at which half of the fees were incurred.

48. The defendants' position is that the claimants are not entitled to any interest on pre-judgment costs because they have not paid any legal fees or disbursements up front and have not explained how they are out of pocket.

49. CPR 44.2(6)(g) gives the court discretionary power to order a party to pay interest on costs from or until a certain date, including a date before judgment.

50. In *Jones v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 363 this rule was explained by Sharp LJ at [17]:

> "The purpose of such an award is to compensate a party who has been deprived of the use of his money, or who has had to borrow money to pay for his legal costs. The relevant principles do not materially differ from those applicable to the award of interest on damages under s 35A of the Senior Courts Act 1981. The discretion conferred by the rule in respect of pre-judgment interest is not fettered by the statutory rate of interest, under the Judgments Act 1838, but is at large. Ultimately, the court conducts a general appraisal of the position having regard to what is reasonable for both the paying and the receiving parties. This normally involves an assessment of what is reasonable having regard to the class of litigant to which the relevant party belongs, rather than a minute assessment which it would be inconvenient and disproportionate to undertake. In commercial cases the rate of interest is usually set by reference to the short-term cost of unsecured borrowing for the relevant class of litigant, though it is always possible for a party to displace a "rule of thumb" by adducing evidence, and the rate charged to a recipient who has actually borrowed money may be relevant but is not determinative. See *F&C Alternative Investments Ltd v Barthelemy (No. 3)* CA [2013] 1 WLR at paras 98, 99 and 102 to 105; *Bim Kemi AB v Blackburn Chemicals Ltd* [2003] EWCA

> Civ 889 at 18 and for example, *Fiona Trust & Holding Corporation v Privalov* [2011] EWHC 664 (Comm)."

51. In this case, the claimants have not been required to fund the litigation directly and have made no payments in respect of costs. Pogust Goodhead have obtained funding for the litigation and the claimants do not have to pay any costs unless and until any damages are awarded. However, in that eventuality, the claimants will be liable to pay success fees to their legal representatives reflecting the costs of funding the litigation, thereby reducing any damages received. It is a liability for costs, albeit a contingent liability at this stage. As a matter of principle, the claimants should be entitled to compensation in respect of the funding expenses for which they will be indebted out of any damages. The fact that their solicitors and/or funders have accepted the risk that the costs and funding expenses will only be recouped from any damages does not detract from that position.

52. On balance, I consider that it would be appropriate for the court to exercise its discretion and award pre-judgment interest on costs, at the rate of 1% above base rate, up to the date of the order for costs. The claimants' submission that the court should adopt the point at which half of the fees were incurred, 1 August 2023, for the purpose of calculating the interest, is a pragmatic and proportionate approach which the court accepts.

Timing of assessment for costs

53. The claimants seek an order for the detailed assessment of their Stage 1 costs and the jurisdiction costs ordered by the Court of Appeal forthwith pursuant to CPR 47.1. The defendants' position is that the court should follow the general rule that costs should not be assessed on a detailed basis at this stage.

54. CPR 47.1 provides that the general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings, but the court may order them to be assessed immediately.

55. It may be appropriate for the court to order an immediate assessment of costs where discrete issues have been determined and discrete orders for costs made but the court may decline to make such an order where it would be lengthy, costly and disruptive to the proceedings.

56. In this case, the costs claimed are very high indeed and it is clear that they will be the subject of challenge. As submitted by Mr Sloboda, it is inevitable that the detailed assessment of the claimants' costs will be complex and protracted. It will include disputes as to the recoverability of heads of cost, the costs attributable to the Stage 1 Trial (as opposed to Stage 2 or the overall proceedings) and issues of proportionality and reasonableness. An immediate detailed assessment would be disruptive to the proceedings at a time when the parties already have the very heavy burden of preparing for the Stage 2 Trial, a task that should not be underestimated.

57. Any application regarding the timing of assessment of the jurisdiction/strike out costs ordered by the Court of Appeal would have to be made to that court. If this court had jurisdiction to make any order in respect of those costs, it would decline to order an immediate assessment for the reasons set out above.

58. It is clear to me that this is not a case where there should be any departure from the general order that any detailed assessment should take place at the conclusion of the proceedings.

Application for permission to appeal

59. The defendants seek permission to appeal in respect of the draft grounds of appeal filed on 15 December 2025.

60. CPR 52.21 provides that the appeal court will allow an appeal where the decision of the lower court was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

61. The basis of the proposed appeal is that in reaching its decisions on strict liability, fault-based liability, limitation and the standing of Municipalities, the court failed to engage with critical issues in dispute, carry out a judicial evaluation, and provide any, or any proper, reasons why the defendants' case was rejected. As a result, it is said that those decisions are unjust because of serious procedural irregularity.

62. The test for permission to appeal is set out in CPR 52.6, namely, where:

    i) the court considers that the appeal would have a real prospect of success; or

    ii) there is some other compelling reason for the appeal to be heard.

63. Although framed as one ground, summarised in Ground 1, the defendants raise a number of criticisms in Grounds 2 to 9 in respect of which it is said that the court failed to engage with the critical issues in dispute, carry out a judicial evaluation or provide any, or any proper, reasons why the defendants' case was rejected. That criticism does not have a real prospect of success on a fair reading of the Judgment for the following brief reasons.

64. As to Ground 2.1, namely, that the court failed to engage with the issue of polluter definition under the Environmental Law:

    i) It is not suggested that the court made any error in identifying the test applicable where the claims are based on foreign law, or the summary of the Brazilian legal system as relevant to the claims before it, at paragraphs [233] to [249] of the Judgment.

    ii) The Environmental Law issues were identified at paragraphs [250] to [251] of the Judgment. The competing views of the environmental law experts were set out in paragraphs [260] to [277]. The court's conclusions on these issues were set out in paragraphs [377] to [385].

    iii) The issue of polluter definition was considered and determined, with reasons for the court's preference for the opinion of Professor Sarlet, the claimants' expert, rather than Professor Dantas, the defendants' expert, at paragraphs [289] to [330] of the Judgment.

    iv) The defendants seek to rely on their position at trial, namely, that there is a conceptual distinction between direct and indirect responsibility under the

Environmental Law. That case was put to Professor Sarlet in cross-examination but he did not accept it, as set out in the Judgment at paragraphs [292] to [295]. Likewise, the defendants' case on the need for a duty of safety was put to Professor Sarlet but not accepted - see paragraphs [314] to [317]. Both experts agreed that Justice Benjamin's observations in *Mangroves* STJ 650.728 and *Jacupiranga* STJ 1.071.741 were correct statements of the regime of environmental civil liability in respect of both direct and indirect polluters – see paragraphs [309] and [316].

65. As to Ground 2.2, that the court failed to engage with the issue of the causation test for the purpose of establishing liability under the Environmental Law:

    i) The competing views of the experts were set out in paragraphs [260] to [277] and, specifically regarding the causation test, at [331] to [332] of the Judgment.

    ii) The expert evidence on the relevant causation test, including the *Vicuña* case, was discussed in detail, and the reasons for the court's preference for the opinion of Professor Sarlet to that of Professor Dantas explained, by reference to the case law and the evidence, in paragraphs [302] to [304], and [333] to [361] of the Judgment.

66. As to Ground 3, that the court failed to engage with material issues in respect of the application of the Environmental Law to the facts:

    i) The court summarised the dispute between the parties on the application of the Environmental Law to the facts at paragraphs [386] to [387] of the Judgment.

    ii) The court expressly recorded the experts' agreement that the exercise of controlling shareholder power, whilst a relevant factor, was not, without more, sufficient to justify liability as set out at paragraphs [320]-[321] and [389] of the Judgment.

    iii) For that reason, the court examined in detail the evidence as to the defendants' involvement in and control over the activity of Samarco to determine whether they were directly or indirectly responsible for such activity for the purpose of the Environmental Law at paragraphs [390] to [532]. The evidence before the court was the defendants' own witness statements, documents and cross-examination on the same.

    iv) The defendants suggest in Ground 3.2 that the court's finding on attribution of knowledge and conduct was based on an error of law but these factors, although part of the overall evidence, were not a necessary element of strict liability under the Environmental Law test as found on the expert evidence by the court.

    v) The court summarised the defendants' case on application of the Environmental Law at paragraph [387] of the Judgment and considered each of the issues identified by the defendants, including: (a) Samarco's corporate governance and management at paragraphs [390] to [431], and [517] to [522]; (b) the defendants' influence over Samarco at paragraphs [432] to [454]; (c) control over and participation in Samarco projects at paragraphs [486] to [509]; (d) risk management at paragraphs [455] to [485]; and (e) funding and benefits at

paragraphs [510] to [516]. The conclusions were set out at paragraphs [523] to [532].

vi) It was not necessary or desirable for the court to respond to each and every point made by the parties, given the length of the submissions and appendices on each side. Such an approach would have resulted in a prolix judgment that obfuscated, rather than clarified the reasons for the conclusions reached.

67. As to Ground 4, that the court failed to engage with the defendants' case on knowledge in relation to the fault-based liability findings:

i) There is no challenge to the court's overview of the fault-based case at [535] to [540] or the applicable principles set out in paragraphs [541] to [569], [581] to [593], [594] to [602] and [640] to [649] of the Judgment.

ii) There is no challenge to the court's findings as to the cause(s) of the collapse set out in paragraphs [91] to [232] of the Judgment.

iii) The discussion of the evidence regarding the defendants' actual or constructive knowledge of the stability issues in the dam prior to the collapse is set out in paragraphs [650] to [742] of the Judgment.

iv) The defendants' counterfactual case, that it was entitled to rely on contemporaneous reports which did not indicate any significant risk or warning, was considered against all relevant contemporaneous reports in paragraphs [743] to [793] of the Judgment.

v) The court's conclusions as to the defendants' liability under the Civil Code were summarised in paragraphs [801] to [808] of the Judgment.

vi) The fault-based claim was an alternative to the strict liability claim under the Environmental Law. It was not necessary or desirable for the court to respond to each and every point made by the parties in their lengthy submissions, particularly where the court had found in favour of the claimants on their primary case of strict liability.

68. As to Ground 5, that the court failed to engage with the defendants' pleading objections, risk management issues and counterfactuals when considering causation for the purpose of Article 186 (fault) liability:

i) The agreed list of issues identified the questions on fault and causation for the claim under Article 186 in very broad terms at Issues 11, 12 and 13.

ii) The court carried out a detailed analysis of the causes, risk identification, foreseeability and avoidability of the collapse of the dam at paragraphs [91] to [232] of the Judgment. It is not suggested by the defendants that there are any errors of law or principle in this analysis.

iii) The court's conclusions on fault liability, including causation, in the light of the earlier detailed findings in the Judgment, are set out in paragraphs [801] to [808].

69. As to Ground 6, that the court failed to engage with issues concerning Article 200 of the Civil Code:

    i) The court identified the relevant issues in dispute, considered the words used in Article 200, the expert evidence and the cases identified by the experts as part of its analysis and in reaching its conclusions at paragraphs [831] to [861] of the Judgment.

    ii) As recognised by the defendants, the court did engage with the application of Article 200 to non-parties to the criminal investigation or proceedings. The court was entitled to rely on Professor Tepedino's concession in cross-examination on this point.

    iii) The court did not determine this issue on a literal interpretation but carried out analysis of the relevant case law in some detail against the differing views of the experts.

70. As to Ground 7, that the court failed to engage with a disputed issue as to whether qualification as a bystander under Article 17 of the Consumer Defence Code required that the relevant harm was caused by a product or service provided to the consumer market:

    i) The court considered the application of Article 17 of the Consumer Defence Code at paragraphs [917] to [937] of the Judgment.

    ii) Express consideration was given to the STJ's broad interpretation of consumers by equivalence, including Reporting Justice Andrighi's explanation in *Pedra do Cavalo 4* STJ Special Appeal No. 2.018.386 (2023) at paragraph [931].

71. As to Ground 8, that the court failed to engage with the issue whether the 1932 Decree was applicable to claims brought by public entities which were not of a public nature:

    i) The interpretation and application of the Decree was considered by the court at paragraphs [938] to [944] of the Judgment.

    ii) The issue was dealt with shortly because it was one of a number of alternative arguments which the court had already addressed.

    iii) The court explained its preference for the opinion of Professor Rosenvald on this issue, which was supported by the identified cases, rather than the opinion of Professor Tepedino, which was not supported by any case law.

72. As to Ground 9, that the court failed to engage with key evidence regarding the standing of Municipalities:

    i) This issue is addressed by the court at paragraphs [1090] to [1108] of the Judgment. The court explained the reasons on which it preferred the opinion of Professor Sarlet over that of Professor Tepedino on this issue.

    ii) The decision in *Durant* did not expressly consider or determine the issue that was before this court.

iii) The defendants seek to rely on a later STF reference, sent to the court under cover of a letter dated 29 August 2025 but no application was made to adduce this as evidence in the case and the experts were not given any opportunity to provide their comments on it to the court.

73. In summary, despite the clear and careful submissions of Ms Fatima KC, leading counsel for the defendants, the appeal has no real prospect of success.

74. There is no other compelling reason for the appeal to be heard. Although the Judgment may be of interest to other parties in other jurisdictions, it is a decision on issues of Brazilian law established as fact in this jurisdiction, together with factual and expert evidence.

75. For the above reasons, permission to appeal is refused.

76. The defendants are entitled to seek permission to appeal from the Court of Appeal. The court grants an extension of time of 28 days from the date of hand down of this Judgment for making any application for permission to appeal to the Court of Appeal.

Order

77. The claimants are directed to draw up and seek to agree with the defendants an order to reflect the above rulings within 7 days of the hand down of this Judgment.

78. Following hand down of this judgment, the hearing will be adjourned to a date to be fixed (or for decision in writing) for the purpose of any applications for permission to appeal or other consequential matters. Therefore, any relevant time limits are extended until the adjourned hearing or further order.