

## Brief history

In 2018, English law firm Pogust Goodhead, formerly SPG Law, filed a lawsuit in the United Kingdom against BHP Group Ltd and BHP Group (UK) Ltd (formerly BHP Group Plc), representing a group of Brazilian plaintiffs seeking indemnification for alleged damages arising from the failure of the Fundão Dam, in 2015.

The Fundão Dam was operated and owned by Samarco Mineração S.A., which in turn is a joint venture (with autonomous and independent operation) 50% controlled by Vale S.A. and the other 50% by BHP Billiton Brasil.

In November 2020, the English Court accepted the arguments raised by BHP and extinguished the lawsuit on the grounds of procedural abuse. On July 8, 2022, however, the Court of Appeal reversed the dismissal of the case, allowing the case to continue in the United Kingdom.

After intense initiatives by Pogust Goodhead to attract clients in several Brazilian municipalities, new plaintiffs joined the

process in February 2023 and, currently, the action has around 620,000 plaintiffs, including individuals, municipalities, legal entities, indigenous groups and religious institutions.

Despite the apparently significant number of plaintiffs, many of them have already benefited from programs provided for in the Adjustment and Conduct Transaction Term (TTAC), signed in 2016 by Samarco, Vale and BHP Brasil with various public entities, such as the Federal Union and other public entities, and through which measures were established to be implemented aiming at a global, efficient and effective solution, through full repair of the impacts arising from the dam failure.

Among the main features of the TTAC, the creation of the Renova Foundation stands out. Renova is an autonomous foundation fully dedicated to the implementation of the programs and measures foreseen in the TTAC for the full repair of the impacts arising from the dam failure.



## Stages of the process

### First Stage - Definition of Jurisdiction

Initial stage of the case, already overcome, in which the jurisdiction of the English Court to judge the case was discussed. The jurisdiction of the English Court was recognized, and the action was ordered to continue in the United Kingdom.

### Second Stage – Responsibility assessment

The second stage of the process deals with the question of whether or not BHP is liable for damages arising from the dam failure. This stage is ongoing, and, in October 2024, there will be a hearing lasting 12 weeks to hear the issues. In addition to the legal and factual aspects of the case, the English Court will also decide regarding the prescription of the plaintiffs' claims and the effects of the agreements signed and discharges granted by several plaintiffs in Brazil. If BHP's defense grounds are upheld, the process will end at this stage. Otherwise, the process will proceed to the third stage.

### Third Stage - Definition of Eventual Compensation

If, in the second stage of the action, BHP is held liable for the damages resulting from the dam failure, the third stage of the action will begin, in which the right of each of the plaintiffs to the compensation claimed will be assessed. More specifically, the English Court must decide whether the damages alleged by the plaintiffs are compensable and each plaintiff must individually prove their damages.

Therefore, even if the process advances to the third stage, there is no guarantee that the plaintiffs will receive any type of compensation. Any payment will depend on new decisions regarding the individual rights of each author, which will define whether the author is entitled to receive any payment and, if so, what amount is entitled to.

The English Court has currently scheduled a 22-week trial to assess these issues from October 2026. Given the complex exercise of having to determine and apply the principles for establishing and quantifying loss under Brazilian law for over 620K plaintiffs no payments are expected before 2027/2028.



## 1. What is the amount of this claim?

There are no values calculated or defined at the current stage of the action. Although the plaintiffs' law firm has already published an estimate of the value related to the case in some media outlets, so far, no concrete elements capable of justifying or substantiating such a value have been presented. Possibly, only at the end of the third stage of the action will there be any clarity regarding the value actually involved.

## 2. Who are the plaintiffs?

There are more than 620,000 plaintiffs, including individuals, municipalities, religious institutions, legal entities and members of indigenous and traditional communities. It is estimated that at least 200,000 plaintiffs have already benefited from the compensation programs developed by the Renova Foundation in Brazil and have already received compensation for the damages suffered (granting the respective settlement).

## 3. What exactly are the indemnification claims?

The plaintiffs claim indemnification for alleged material, moral and extra-patrimonial damages allegedly caused by the dam failure. The plaintiffs' claims are exclusively grounded in Brazilian material law and the analysis of liability will be undertaken by the English Court also on the basis of said law.

## 4. What is the position of BHP Brasil and BHP?

BHP Brasil has always been and continues to be fully committed to doing what is right for those impacted by the dam failure and will continue to support Samarco and the Renova Foundation in the comprehensive reparation efforts underway in Brazil. A definitive and substantive agreement has been finalised in Brazil that provides reparation for the impacts of Samarco's Fundão dam failure and builds on existing remediation and compensation work. The total agreement value is R\$ 170 billion (US\$ 31.7 billion) which incorporates amounts already invested to date plus future payments and obligations. This agreement is the result of extensive consultation and engagement by the Companies, federal and state governments, municipalities and other public authorities, including public defenders and prosecutors, over an extended period to address the requirements of those affected. In turn, BHP fully refutes the requests made in the action filed in the United Kingdom and will continue to defend the action, which is unnecessary and abusive as it duplicates matters already covered by the existing and ongoing work of the Renova Foundation and other legal proceedings in Brazil.

## 5. Will BHP charge any amounts to the plaintiffs who drop their lawsuit in the United Kingdom?

No. The public statement released by the law firm Pogust Goodhead that BHP would charge fees or any amounts from the plaintiffs was made without any legal basis or any consultation with BHP's representatives. Furthermore, BHP has never taken

<sup>1</sup>Over R\$23.3 billion / US\$4.7 billion has been paid to individuals and communities through (i) indemnification systems (R\$18 billion which is quoted in the previous public disclosures), (ii) court settlements, and (iii) resettlement (together, (i) and (ii) is R\$5.3 billion).

any steps to charge any amounts to the plaintiffs who withdraw from the lawsuit in the United Kingdom (and not even in Brazil). In a letter addressed to the law firm Pogust Goodhead on November 23, 2021, BHP informed that no measures will be taken to enforce any request for payment of fees against the plaintiffs who discontinue their claim for indemnification in the United Kingdom, either by mere withdrawal or because said plaintiffs have opted to resort to the channels available in Brazil, such as the Novel Indemnification System.

## 6. How long will the remediation and indemnification process last in Brazil? Why is it taking so long?

The remediation and compensation processes implemented and executed by the Renova Foundation in Brazil involve significant efforts and much has already been done to date, with the payment of more than R\$23 billion<sup>1</sup> in compensation to more than 432,000 people, and a total disbursement of more of R\$38 billion as part of the remediation process. All efforts are aimed at effective full reparation for people impacted by the dam failure in Brazil. There is no reason to believe that a quicker response would be achieved in the UK, where there is no existing or ongoing remediation and compensation system. The case filed in the United Kingdom is still at an early stage and will take a considerable amount of time until its conclusion and eventual payment of compensation to the plaintiffs who have proven compensable damages if BHP's liability is recognized. The mechanisms available in Brazil continue to be the most efficient and reliable means for people impacted by the dam failure to receive compensation and/or pursue their claims through the courts.

## 8. What is the current status of the lawsuit and the next steps?

The trial to consider whether or not BHP is liable will begin in October 2024 and is estimated to last 12 weeks. In the judgment that will follow, individual requests from each author will not be dealt with. If, contrary to BHP's defense, BHP's liability is recognized, the case will proceed to the next phase, in which the compensation requests made by the plaintiffs will be analyzed individually, in accordance with Brazilian legislation. Only if they are judged legally applicable and are duly proven will individual requests be quantified and may result in a payment order in favor of the author.

In Brazil, over R\$ 38 billion has already been disbursed by the Renova Foundation in reparation actions, of which approximately 50% has been paid directly to the people affected through individual indemnifications. An estimated 200,000 plaintiffs in the English lawsuit have already received payments in Brazil - many of whom have even granted discharge as a result of such payments - which corresponds to over R\$ 10 million, and it is unlikely that any additional indemnification will be recognized in England in favor of these same plaintiffs.