

Neutral Citation Number: [2024] EWHC 955 (TCC)

Case No: HT-2022-000304

**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: 18 April 2024

**Before :**

**Mrs Justice O'Farrell**

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**Between :**

**Município de Mariana & Others**

**Claimants**

**- and -**

**BHP Group (UK) Ltd and BHP  
Group Limited**

**Defendants**

**- and -**

**VALE S.A.**

**Third Party**

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

**Daniel Toledano KC, Shaheed Fatima KC, Victoria Windle KC, Nicholas Sloboda KC,  
Maximillian Schlote and Joe Johnson (instructed by Slaughter and May) for the Defendants  
Vernon Flynn KC, Crawford Jamieson and Charles Wall (instructed by White & Case) for  
the Third Party**

Hearing dates: **18<sup>th</sup> April 2024**  
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**RULING ON SAMPLE AGREEMENTS**

**Mrs Justice O'Farrell**  
(16:10pm)

**Thursday, 18 April 2024**

**Ruling by MRS JUSTICE O'FARRELL**

1. I am not going to add these additional two or three sample agreements into the data set for the purposes of the settlement issues.
2. I understand the defendants' desire to have a sample set of settlement agreements that is as wide and as representative as possible. I also understand that these are being put forward as additional types of settlement agreement that cover indigenous communities with slightly different wording; and that it would be helpful to have a court ruling on them when the court is considering the existing issues for the stage 1 trial.
3. However, I am concerned that because the parties haven't had an opportunity to work through the implications of adding in these settlement agreements, it could have adverse effects on the Stage 1 trial. It could be that, after everyone has carried out quite a lot of additional work, it's found that they are too complicated to deal with because there are additional specific issues related to the fact that they are collective agreements for indigenous peoples. Alternatively, if we stumble on, having incorporated them, the issues could grow ever longer and more complicated.
4. I think we have now reached a stage where, if and in so far as tweaks can be made to the issues, or specific issues added based on existing pleadings, that is to be commended and is appropriate. But I think that it is too late at this stage to start adding additional sample agreements.
5. If in fact they don't raise any issues beyond those that are already identified, then the court's ruling on those issues by definition should automatically apply to these other settlement agreements. If and in so far as there are separate issues that are raised by those agreements settlement agreements, either they won't be addressed by the court, thereby making it lacking in utility in adding them in, or the court will then be confronted with the need to address what could be a relatively wide ranging additional investigation.
6. So for all of those reasons I decline the invitation to add in the additional samples.