

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID649/2018
File Title: Vince Impiombato, and Klemweb Nominees Pty Ltd as trustee for the Klemweb Superannuation Fund v BHP Group Ltd
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/09/2020 11:24:35 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17

Rule 8.05(1)(a)

Amended Consolidated Statement of Claim

(Amended on 7 September 2020 pursuant to leave granted by Justice Moshinsky on 7 September 2020 ~~16 August 2019~~ and filed in accordance with ~~Orders 9 and 10~~ made by the Full Court on ~~19 July 2019~~ in ~~VID58/2019~~ and ~~VID169/2019~~)

VID 649 of 2018

Federal Court of Australia

District Registry: Victoria

Division: General

VINCE IMPIOMBATO, AND KLEMWEB NOMINEES PTY LTD (AS TRUSTEE FOR THE KLEMWEB SUPERANNUATION FUND)

Joint Representative Applicants

BHP GROUP LIMITED

(ACN 004 028 077)

Respondent

A. THE JOINT APPLICANTS AND GROUP MEMBERS

1. Vince Impiombato (**Impiombato**) and Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund) (**Klemweb**) commence this proceeding as joint representative applicants (**Joint Applicants**) pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own respective behalves and on behalf of the Group Members.

Filed on behalf of (name & role of party)	The Joint Applicants, Vince Impiombato and Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Fund)		
Prepared by (name of person/lawyer)	Benjamin Phi and Andrew Watson		
Law firm (if applicable)	Phi Finney McDonald and Maurice Blackburn Lawyers		
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Address for service (include state and postcode)	Phi Finney McDonald, Level 3, 325 Flinders Lane, Melbourne VIC 3000		

2. Klemweb:
- (a) is incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and is capable of suing in its own name; and
 - (b) brings this proceeding in its capacity as trustee for the Klemweb Superannuation Fund.
3. The Joint Applicants and the persons they represent (the **Group Members**) are all persons who or which:
- (a) during the period from 8 August 2012 to the close of trade on 9 November 2015 inclusive (**Relevant Period**) entered into a contract (whether themselves or by an agent or trustee) to acquire an interest in fully paid up ordinary shares in:
 - (i) the Respondent, formerly BHP Billiton Limited (**BHP Ltd**), on the Australian Securities Exchange (**ASX**), a financial market operated by ~~the Australian Exchange~~ ASX Limited (the **BHP ASX Shares**);
 - (ii) BHP Group Plc, formerly BHP Billiton Plc (**BHP Plc**), a company registered in England and Wales, on the London Stock Exchange (**LSE**), a financial market operated by the London Stock Exchange Group Plc (the **BHP LSE Shares**); and/or
 - (iii) BHP Plc on the Johannesburg Stock Exchange (**JSE**), a financial market operated by the Johannesburg Stock Exchange Limited (the **BHP JSE Shares**);

Particulars

Particulars of Impiombato's shareholdings during the Relevant Period are set out in Annexure A to this statement of claim.

Particulars of Klemweb's shareholdings during the Relevant Period are set out in Annexure B to this statement of claim.

Particulars of the shareholdings of the Group Members in the Relevant Period will be provided after the trial of the common questions.

- (b) were not during any part of the Relevant Period, and are not, any of the following:
 - (i) a director or officer or a close associate (as defined by s 9 of the Corporations Act) of BHP Ltd;
 - (ii) a related party (as defined by s 228 of the Corporations Act) of BHP Ltd;
 - (iii) a related body corporate (as defined by s 50 of the Corporations Act) of

BHP Ltd;

- (iv) an associated entity (as defined by s 50AAA of the Corporations Act) of BHP Ltd;
 - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia; or
 - (vi) an officer or employee of Maurice Blackburn Lawyers or Phi Finney McDonald, or a legal representative engaged by Maurice Blackburn Lawyers or Phi Finney McDonald in this proceeding; and
- (c) are alleged to have suffered loss or damage by, or which resulted from, the conduct of BHP Ltd as pleaded in this statement of claim.
4. As at the date of the commencement of this proceeding, there are more than seven Group Members.

B. BHP LTD

5. BHP Ltd:

- (a) is and at all material times was a corporation incorporated under the Corporations Act and capable of being sued;
- (b) is and at all material times was a corporation listed on the ASX;
- (c) at all material times had on issue BHP ASX Shares that were:
 - (i) trading on the ASX under the designation "BHP";
 - (ii) ED securities for the purposes of s 111AE of the Corporations Act;
 - (iii) quoted ED securities within the meaning of s 111AM of the Corporations Act;
 - (iv) a financial product within the meaning of s 763A(1)(a) and s 764(1)(a) of the Corporations Act and s 12BAA(1)(a) and s (7)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (v) able to be acquired and sold by investors and potential investors in BHP ASX Shares on the ASX (**BHP ASX Share Market**).
- (d) is and was at all material times a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (e) is and was at all material times subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);

- (f) is and was at all material times subject to the requirements of s 674 of the Corporations Act;
- (g) is and at all material times was a trading corporation within the meaning of the ASIC Act;
- (h) is and at all material times was a person within the meaning of:
 - (i) s 1041H of the Corporations Act; and
 - (ii) s 12DA of the ASIC Act.

C. BHP LTD'S CONTINUOUS DISCLOSURE OBLIGATIONS

- 6. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to the BHP ASX Shares, for the purposes of s 674(1) of the Corporations Act.
- 7. At all material times:
 - (a) BHP Ltd was obliged by s 111AP(1) and/or s 674(2) of the Corporations Act and/or Rule 3.1 of the ASX Listing Rules, once it became aware of any information concerning BHP Ltd that a reasonable person would expect to have a material effect on the price or value of BHP ASX Shares, to tell the ASX that information immediately, unless any of the exceptions in Rule 3.1A of the ASX Listing Rules applied (**Continuous Disclosure Obligations**); and
 - (b) from the start of the Relevant Period until 30 April 2013, pursuant to Rule 19.12 of the ASX Listing Rules, BHP Ltd was taken to become aware of information if a director or executive officer of BHP Ltd had, or ought reasonably to have, come into the possession of the information in the course of the performance of their duties as a director or executive officer of BHP Ltd; and
 - (c) from 1 May 2013 to the end of the Relevant Period, pursuant to Rule 19.12 of the ASX Listing Rules, BHP Ltd was taken to become aware of information if, and as soon as, an officer of BHP Ltd had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of BHP Ltd.

D. BHP PLC

- 8. At all material times, BHP Plc has had on issue:
 - (a) BHP LSE Shares which were and are:
 - (i) traded on the LSE under the designation "BLT"; and

- (ii) able to be acquired and sold by investors and potential investors in BHP LSE Shares on the LSE (**BHP LSE Share Market**); and
- (b) BHP JSE Shares which were and are:
 - (i) traded on the JSE under the designation "BIL"; and
 - (ii) able to be acquired and sold by investors and potential investors in BHP JSE Shares on the JSE (**BHP JSE Share Market**).

E. BHP GROUP

E.1 DLC Structure and Management

9. At all material times, BHP Ltd and BHP Plc (~~collectively, BHP~~) had a dual listed company structure (**DLC Structure**).

Particulars

DLC Structure Sharing Agreement, recital A and cl 2.

10. Pursuant to the DLC Structure, BHP Ltd and BHP Plc operated as if they were a single unified economic entity, ~~(BHP)~~, through:
- (a) identical boards of directors which comprised the same individuals; and

Particulars

DLC Structure Sharing Agreement, cl 2(b).

- (b) a single unified management team; including a single Group Management Committee, being BHP's most senior executive body (**BHP GMC**);

Particulars

BHP annual report for the 2011 financial year (FY) (being the period between 1 July 2010 and 30 June 2011), page 127; BHP FY2012 annual report, page 131; BHP FY2013 annual report, page 151; BHP FY2014 annual report, page 172; BHP FY2015 annual report, page 160.

At all material times, the purpose of the GMC was inter alia to: (i) assist the Chief Executive Officer in pursuing BHP's corporate purpose; (ii) provide leadership to the BHP Group, determine its priorities and guide its operations; and (iii) provide a forum to debate high-level matters and ensure consistent development of the BHP Group's strategy.

- (c) the economic and voting interests in BHP resulting from holding one share in BHP Ltd were equivalent to the economic and voting interests resulting from holding one share in BHP Plc.

Particulars

DLC Structure Sharing Agreement, cl 3.

E.2 BHP Ltd Officers

11. Mr Marcus Randolph (**Randolph**) was:
- (a) from around June 2007 to around May 2013, a member of the BHP GMC;
 - (b) from around June 2007 to around September 2013, Chief Executive of the Ferrous & Coal division of BHP;
 - (c) by reason of the above:
 - (i) at all times during the Relevant Period up to 1 May 2013, an executive officer of BHP Ltd; and
 - (ii) at all times at and from 1 May 2013 until around September 2013, an officer of BHP Ltd,within the meaning of Rule 19.12 of the ASX Listing Rules.
12. Mr Ian Ashby (**Ashby**) was:
- (a) from at least around 2007 to around 2012, President, Iron Ore, at BHP;
 - (b) by reason of the above, at all times during the Relevant Period up to around 2012, an executive officer of BHP Ltd within the meaning of Rule 19.12 of the ASX Listing Rules.
13. Mr Jimmy Wilson (**Wilson**) was:
- (a) from around March 2012 to around 29 February 2016, President, Iron Ore, at BHP;
 - (b) from around May 2013 to around 29 February 2016, a member of the BHP GMC;
 - (c) by reason of the above:
 - (i) at all times during the Relevant Period up to 1 May 2013, an executive officer of BHP Ltd; and
 - (ii) at all times at and from 1 May 2013 until the end of the Relevant Period an officer of BHP Ltd,within the meaning of Rule 19.12 of the ASX Listing Rules.

14. Mr Jeffrey Zweig (**Zweig**) was:
- (a) from around February 2012 to around October 2014, Vice President, Strategy and Development in the Iron Ore division of BHP;
 - (b) by reason of the above:
 - (i) at all times during the Relevant Period up to 1 May 2013, an executive officer of BHP Ltd; and
 - (ii) at all times at and from 1 May 2013 until around October 2014, an officer of BHP Ltd,within the meaning of Rule 19.12 of the ASX Listing Rules.
15. Ms Margaret Beck (**Beck**) was:
- (a) from around September 2013 to around March 2016, Vice President, Finance, in the Iron Ore division of BHP;
 - (b) by reason of the above, at all times from around September 2013 to the end of the Relevant Period, an officer of BHP Ltd within the meaning of Rule 19.12 of the ASX Listing Rules.
16. Mr Sérgio Consoli Fernandes (**Fernandes**) was:
- (a) from around April 2012 and around the end of the Relevant Period, Director of Iron Ore in the Americas at BHP;
 - (b) by reason of the above:
 - (i) at all times from the start of the Relevant Period up to 1 May 2013, an executive officer of BHP Ltd; and
 - (ii) at all times at and from 1 May 2013 up to around the end of the Relevant Period, an officer of BHP Ltd,within the meaning of Rule 19.12 of the ASX Listing Rules.
17. At all material times, each of the members of the BHP GMC was an executive officer and/or an officer of BHP Ltd for the purposes of ASX Listing Rule 19.12 (as in force at the relevant time).

18. By reason of paragraphs 11 to 17 above, any information of which any of the persons referred to in those paragraphs became aware or which ought reasonably have come into their possession, including in the course of carrying out their duties, was information of which BHP Ltd was aware within the meaning of Rule 3.1 and Rule 19.12 of the ASX Listing Rules.

F. BHP'S SAMARCO ASSET

19. At all material times, BHP carried on a business of exploration and production of minerals, including of iron ore, copper and coal, and of exploration, production and refining of petroleum.
20. At all material times, BHP's operating model had four business units, including a business unit with responsibility for BHP's iron ore business (the **Iron Ore Business**).
21. At all material times, BHP's Iron Ore Business comprised two assets, one of which was BHP's 50% interest in Samarco Mineração S.A. (**Samarco**).

Particulars

- i. Samarco is and was at all material times a company registered in the Federative Republic of Brazil (**Brazil**).*
 - ii. BHP Billiton Brasil Ltda (**BHP Brasil**), a wholly owned subsidiary of BHP, registered in Brazil, has at all material times held 50% of the shares in Samarco.*
 - iii. Vale S.A. (**Vale**), a company registered in Brazil, has at all material times held the other 50% of the shares in Samarco.*
 - iv. BHP has at all material times, through BHP Brasil, operated Samarco as a joint venture with Vale.*
22. At all material times, BHP's interest in Samarco:
- (a) represented a significant investment by BHP;
 - (b) was a material asset of BHP;

Particulars

- i. In October 2005, BHP announced the approval of the Third Pellet Plant Project, which would increase Samarco's annual iron ore pellet production capacity by 7.6 million tonnes, at a cost to BHP of US\$590 million: see BHP News Release "BHP Billiton Approves Samarco Expansion" dated 20 October 2005.*

- ii. In April 2011, BHP announced that the approval of the Fourth Pellet Plant Project, which would increase Samarco's annual iron ore pellet production capacity by 8.3 million tonnes, at a cost to BHP of US\$1.6 billion: see BHP News Release "BHP Billiton Approves Samarco Expansion" dated 29 April 2011.
- iii. In its FY2014 annual report, at page 18, BHP described its interest in Samarco as one of its 19 "core assets".
- iv. In its annual reports, BHP stated, amongst other things, the following in respect of its interest in Samarco:

Year	Iron Ore Measured Resources	Proved Iron Ore Reserves	BHP's Share of Production	Reserve Life	Carrying Value
FY2012	3,041Mt	1,1,094Mt	11,423Mt	31 years	US\$909m
FY2013	3,000Mt	1,1,900Mt	10,982Mt	40 years	US\$1,044m
FY2014	3,000Mt	1,1,800Mt	10,919Mt	39 years	US\$1,069m
FY2015	2,900Mt	1,1,400Mt	14,513Mt	38 years	US\$1,044m

- (c) generated a material component of BHP's total revenue and earnings.

Particulars

- i. BHP's iron ore division represented the largest source of revenue for BHP in FY2013-FY2015 (BHP FY2015 annual report, page 35).
- ii. The Samarco mining operation was one of BHP's only two iron ore assets, the other being BHP's operations at Western Australian Iron Ore (BHP FY2015 annual report, page 42).
- iii. As at 30 June 2015, the Samarco mining operation represented 52.1% of BHP's measured iron ore resources, 32% of BHP's indicated iron ore resources, 43.5% of BHP's proven iron ore resources and 42.5% of BHP's probable iron ore resources (BHP FY2015 annual report, page 112).
- iv. On 6 November 2015, Deutsche Bank stated that "the mine represents c. 10% of our BHP's earnings" (Deutsche Bank market research report dated 6 November 2015, page 1).
- v. BHP's interest in Samarco contributed the following amounts in respect of the following years:

	Revenue	Underlying EBIT to BHP	BHP's Total Underlying EBIT	% of BHP's Total Underlying EBIT
FY2012	US\$1,996m	US\$1,051m	US\$27,238m	3.86%
FY2013	US\$1,622m	US\$750m	US\$21,127m	3.55%
FY2014	US\$1,634m	US\$790m	US\$22,098m	3.575%
FY2015	US\$1,406m	US\$577m	US\$11,866m	4.86%

23. At all material times, Samarco owned and operated:

(a) the Germano complex in the state of Minas Gerais, Brazil, comprising:

- (i) an iron ore mine;
 - (ii) several concentrators; and
 - (iii) the Fundão tailings dam (the **Fundão Dam**),
- (the **Germano Complex**); and

(b) several pellet plants and a port in the state of Espírito Santo, Brazil, connected by pipelines to the Germano Complex,

(collectively, the **Samarco mining operation**).

Particulars

The Samarco mining operation principally produced iron ore pellets, which involved extraction and beneficiation of iron ore at the Germano Complex and subsequent pellet production at the pellet plants in Espírito Santo.

24. During the Relevant Period, Samarco generated most of its revenue from the sale of iron ore extracted and beneficiated at the Germano Complex.

Particulars

Samarco's Financial Statements dated 31 December 2015, page 68.

25. At all material times, Samarco had a board of directors which:

(a) consisted of 8 members, comprising 4 serving members and 4 alternate members;

- (b) was comprised of representatives appointed by Vale and BHP Brasil respectively;
- (c) was comprised of equal numbers of representatives appointed by Vale and BHP Brasil respectively;
- (d) had responsibility for monitoring, directing and managing Samarco's business;
- (e) had duties including establishing strategic guidance, approving business plans, investments and budget, and monitoring company performance.

Particulars

- i. Samarco's Financial Statement December 31, 2009 and 2008 authorised by Samarco's Executive Board on 26 April 2010, page 21.*
 - ii. Samarco's Management and Financial Statements December 31, 2010 authorised by Samarco's Executive Board on 10 February 2011, page 26.*
 - iii. Samarco's Management Report and Financial Statements December 31, 2012 authorised by the Samarco's Executive Board on 25 March 2013, pages 14-16.*
 - iv. Samarco's Management Report and Financial Statements December 31, 2013 approved by Samarco's Executive Board on 24 February 2014, pages 10-11.*
 - v. Samarco Management Report and Financial Statements December 31, 2014 approved by Samarco's Executive Board on 16 March 2015, page 7.*
26. Samarco's board of directors included the following persons (**BHP's Representatives**):
- (a) Randolph, as a serving member of the board at all material times until about May 2013, including as Chairman between about 2009 and May 2013;
 - (b) Ashby, as a serving member of the board at all material times until about 2012;
 - (c) Wilson, as a serving member of the board at all material times from about 2012, including as Chairman of the board during 2014 and Vice (or Deputy) Chairman of the board during the latter half of 2013 and during 2015;
 - (d) Zweig, as an alternate member of the board from about 2011 or 2012 until 2013 and as a serving member of the board from about 2013 until about late 2014;
 - (e) Beck, as an alternate member of the board in or about 2014; and

- (f) Fernandes, as an alternate member of the board from at least about 2012.

Particulars

- i. *Samarco's Financial Statement December 31, 2009 and 2008 authorised by Samarco's Executive Board on 26 April 2010, page 113.*
 - ii. *Samarco's Management and Financial Statements December 31, 2010 authorised by Samarco's Executive Board on 10 February 2011, page 135.*
 - iii. *Samarco's Management Report and Financial Statements December 31, 2012 authorised by the Samarco's Executive Board on 25 March 2013, page 120.*
 - iv. *Samarco's Management Report and Financial Statements December 31, 2013 approved by Samarco's Executive Board on 24 February 2014, pages 118.*
 - v. *Samarco Management Report and Financial Statements December 31, 2014 approved by Samarco's Executive Board on 16 March 2015, page 92.*
27. At all material times from at least 2009, Samarco's board of directors was advised by various committees and/or advisory boards.

Particulars

- i. *At all material times from at least 2009, the board was advised by a finance and strategy committee (**F&S Committee**), an operations committee (**Operations Committee**) and a remuneration committee (**Remuneration Committee**).*
 - ii. *From time to time from at least 2009, the board was advised by consulting engineers comprising (what Samarco described as) the Independent Tailings Review Board (**ITRB**).*
 - iii. *At all material times, from at least 2013 until 2014, the board was advised by a committee in relation to the Fourth Pellet Plant Project (**P4P Project Committee**).*
 - iv. *At all material times, from 2014, the board was advised by an audit committee;*
 - v. *At all material times, from at least 2009, the board was advised by the Dams Committee.*
28. The role of:
- (a) the F&S Committee included *inter alia* to advise on strategic, economic and financial matters;
 - (b) the Operations Committee was to advise on matters relating to operations and technical issues at Samarco;

- (c) the ITRB was to advise on technical matters relating *inter alia* to tailings disposal and the development of the Fundão Dam;
 - (d) the P4P Project Committee was to advise on matters relating to the Fourth Pellet Plant Project;
 - (e) the Dams Committee was to advise on matters relating to *inter alia* the status and management of Samarco tailings dams and tailings disposal.
29. At all material times from at least 2011, BHP was represented on the Operations Committee by Guilherme Campos Ferreira (**Ferreira**).
30. Further, at all material times from at least December 2013, BHP was represented:
- (a) on the Operations Committee by Fernandes;
 - (b) on the F&S Committee by Fernandes and Andre Cardoso;
 - (c) on the P4P Project Committee by Fernandes and Ferreira (until the committee was disbanded in 2014); and
 - (d) on the Remuneration Committee by Wilson.

G. THE FUNDAO DAM

G.1 Design, location and construction of the Fundão Dam

31. In October 2005, BHP announced the approval of the Third Pellet Plant Project at the Germano Complex, which would increase Samarco's annual iron ore pellet production capacity by 7.6 million tonnes, at a cost to BHP of about US\$590 million.

Particulars

BHP News Release "BHP Billiton Approves Samarco Expansion" dated 20 October 2005.

32. The Third Pellet Plant Project:
- (a) would lead to an increase in tailings waste at the Germano Complex as a result of the growth in production; and
 - (b) involved *inter alia* the construction of the Fundão Dam to store the increased tailings waste.

Particulars

Report of the Fundão Tailings Dam Review Panel entitled 'Report on the Immediate Causes of the Failure of the Fundão Dam' (Panel Report), page 5.

33. By no later than 2008, Samarco approved a design for the Fundão Dam (**Original Design**).

Particulars

The Original Design is discussed in the Panel Report at section 2.1.

34. The Original Design was created by Joaquim Pimenta de Avila of Pimenta de Avila Consultoria Ltda (**Pimenta**).
35. At all material times, the site of the Fundão Dam was:
- (a) within 10 kilometres upstream from the village of Bento Rodrigues;
 - (b) in the proximity of rivers such as the Gualazo do Norte, the Carmo and the Doce;
 - (c) one of the highest sites for a tailings dam in Brazil.
36. The Fundão Dam was constructed using the upstream method, which involved *inter alia*:
- (a) the construction of a starter dam;
 - (b) the progressive raising of the dam crest upstream over previously deposited tailings.

Particulars

Panel Report, page 4.

37. Tailings dams constructed using the upstream method are generally:
- (a) less structurally secure;
 - (b) more susceptible to liquefaction; and
 - (c) more prone to accidents due to structural failures,
- than tailings dams constructed using the downstream method or centreline method.

38. In or around October 2008, tailings from the operation of the Germano Complex commenced to be deposited in the Fundão Dam.
39. At all material times from the commencement of use of the Fundão Dam, it was important for the safe operation of the dam that:
- (a) there be adequate drainage of the tailings deposited in the dam, and in particular the sand tailings;
 - (b) the proportion of sand tailings and slime tailings deposited in the dam be managed in accordance with the Original Design;

Particulars

The Original Design assumed a 70:30 sands:slimes proportion of tailings deposited in the Fundão Dam (Panel Report, page 5).

- (c) the operations manual for the Fundão Dam be updated in circumstances where there were significant modifications in the design of the dam; in circumstances where there were changes in the geometry of the dam; in circumstances where there were changes in the quantity of tailings deposited into the dam; and in any event every two years;

Particulars

Transcript of testimony of Joaquim Pimenta de Avila, page 66 042 Pimenta KT_243_550_Audio(1).wma.

- (d) an area of at least 200 meters width from the Fundão Dam crest should be reserved for the deposit of sands, without any slimes being deposited in the area (**Minimum Beach Width**);

Particulars

*2007, 2011 and 2012 Operations Manuals (**Operations Manuals**), as referred to in the Panel Report, page 10.*

- (e) the Fundão Dam be adequately monitored for pressure, cracks and other indicators of possible structural problems or incipient failure.

Particulars

2012 Operations Manual, pages 28-37.

G.2 Problems as at 8 August 2012

40. By no later than 8 August 2012, it was the case that (**August 2012 Information**):

- (a) the Fundão Dam had experienced numerous structural problems;

Particulars

The structural problems experienced from around August 2009 to around August 2012 included the following:

- i. In or around December 2008, a crack appeared delimiting a slip area, located in the lower dam bank and to the right of the base drain. This developed into a rupture.*
- ii. On or about 13 April 2009, large seepage flows carrying fines, or fine soil particles, appeared on the downstream slope of Dike 1 of the Fundão Dam, which were indicative of internal erosion or piping (the **Piping Incident**) (Panel Report, pages 7-8).*
- iii. Subsequent to the Piping Incident, engineering investigations revealed construction flaws in the base drain and filters of the Fundão Dam, including a portion of the drain's outlet that had never been completed.*
- iv. In about July 2010, there was a vortex in the reservoir above the main gallery for the right abutment, which led to inspections of the relevant area that revealed cracking and structural damage from foundation settlement and construction defects (Panel Report, page 11).*
- v. By February 2011, at the main gallery, there was breakdown of contraction joint sealing devices, infiltration through concrete joints and holes in the gallery, a large number of cracks, instability in the gallery base, rupture of joints, and misalignments on the concrete surfaces between gallery modules (Report prepared by Pimenta dated 25 February 2011, page 37).*
- vi. Similar conditions to those referred to in the preceding subparagraph were discovered in the secondary gallery prior to July 2012 (Panel Report, page 11).*

Further particulars may be provided after discovery and the filing of expert reports.

- (b) significant changes from the Original Design had been made to the Fundão Dam;

Particulars

- i. The Original Design had involved a base drain (Panel Report, page 6). As a result of investigations following the Piping Incident, the base drain was sealed and rendered inoperative (Panel Report, page 8). This occurred in or around October 2009. With this, the most important element of the Original Design became inoperative (Panel Report, page 8).*
- ii. Between June 2010 and November 2010, the design of the dam was further revised to include a blanket drain at El. 826m on the surface of the tailings to replace the inoperative base drain (**Blanket Drain**) (Panel Report, page B.B1-20). The Blanket Drain was located near the top of sand tailings that had nearly filled the starter dam at that time (Panel Report, page 28).*

- iii. *The Original Design involved sand tailings and slimes tailings initially being separated, with sands deposited behind Dike 1 and slimes behind Dike 2. The Original Design contemplated that, over time, the crest of the dam would rise such that sand deposits would eventually form a structure to contain slimes. This required that the sands deposited between the two dikes always remained at a higher elevation than the slimes throughout the raising process (Panel Report, page 5). However, by no later than 2011, the balance between sands and slimes crucial to the dam raising plan had changed. The level of the slimes was higher, rather than lower, than the projected sands in Dike 1, and reduction in pellet production decreased the amount of sand available while delivery of slimes continued. This led to the construction of a third dike, designated **Dike 1A**, to provide additional slimes capacity (Panel Report, page 8).*
- iv. *The Original Design involved the use of the main gallery beneath the right abutment and the secondary gallery beneath the left abutment of the dam, for drainage purposes, and in particular, to evacuate surface water inflows from ordinary precipitation, floods, and discharged tailings slurry (Panel Report, page 6). Between July 2010 and June 2011, the main gallery was taken out of service in order to perform remedial jet grouting works (Panel Report, pages 11; B.B.2-1). Between December 2011 and February 2012, similar jet grouting programs were undertaken for the secondary gallery (Panel Report, page B.B.2-1).*
- v. *Due to the above problems with drainage in the main galleries and secondary galleries, it became necessary to re-route water and slimes from the dike 2 impoundment into dike 1. An overflow channel was constructed from the dike 2 slimes reservoir into dike 1 reservoir in the period from around September 2010 to the end of January 2011 (**Overflow Channel**). The channel was operative from around February 2011 until it was closed (for a period) in August 2012 (Panel Report, pages 39-40; B.B.2-1).*

Further particulars may be provided after discovery and the filing of expert reports.

- (c) structural problems continued to arise, notwithstanding earlier attempts by Samarco to address structural issues;

Particulars

On or around 26 June 2012, seepage was noted at El. 845 m on the non-setback part of the dike crest at the left abutment (Panel Report, page B.B.8-5).

This followed a series of ongoing structural problems, as to which the Joint Applicants refer to paragraph 40(a) above.

Further particulars may be provided after discovery and the filing of expert reports.

- (d) despite ongoing structural problems, the size of the Fundão Dam increased considerably due to the ongoing deposition of tailings, including by reason of tailings from adjoining Vale operations being deposited in the Fundão Dam;

Particulars

- i. *Panel Report, pages 28-34.*
 - ii. *From 2008 onwards, mud from adjoining operations of Vale had been deposited in the Fundão Dam and from 2011 onwards Fundão was the only dam in the Samarco Tailings System into which mud from Vale's operations was deposited (Federal Criminal Forensics Report - Report No 994/2016 (994 Report), pages 184 and 185).*
 - iii. *from 2010, the volumes of mud from Vale's operations deposited into the Fundão Dam increased considerably from the depositions in previous years (994 Report, page 185).*
- (e) the respective volumes of slimes and sandy tailings deposited into the Fundão Dam were not in accordance with the Original Design;

Particulars

- i. *the higher volume of slimes caused the mud elevations to be higher than the sandy tailings elevations (994 report, page 192);*
 - ii. *the release of mud into the dam by Vale contributed to the poor drainage in the dam (994 report, page 194);*
 - iii. *the Joint Applicants refer to particular (iii) subjoined to paragraph 40(b) above.*
- Further particulars may be provided following discovery and the filing of expert reports.*
- (f) there had been repeated breaches of the Minimum Beach Width requirement;

Particulars

- From at least May 2010 onwards, there had been such repeated breaches. During much of 2011 and the first half of 2012, the Minimum Beach Width had not been achieved more often than not, at times encroaching as little as 60 metres from the dam crest (Panel Report, pages 10, B-20-B-25; 994 Report, pages 263 and 266).*
- Further particulars may be provided after discovery and the filing of expert reports.*
- (g) there was saturation of sand tailings to an extent that was not anticipated in the Original Design;

Particulars

- Panel Report, section 4.3.*
- (h) there was a heightened risk of the structural integrity of the Fundão Dam being compromised and dam failure by reason of:

- (i) the increased volume of tailings deposits set out in paragraph 40(d) above;

Particulars

- i. As at around July 2011, the Blanket Drain spanned the entire width of the starter dam embankment, and the impoundment size of the dam was limited, with the Blanket Drain beneath the discharged tailings within the impoundment, where the drain could intercept discharged tailings to the maximum effect (Panel Report, page 29).*
- ii. After July 2011, the starter dam embankment and impoundment had widened and the dam had grown higher, extending beyond the limits of the Blanket Drain. This had the effect of funnelling seepage flow into the narrower drain, and in the process raising the saturation levels in the tailings. At the same time, the impoundment was moving upstream and becoming more distant from the drain as upstream dam raising progressed, also increasing the volume of saturated tailings (Panel Report, section 4.3).*

Further particulars may be provided after discovery and the filing of expert reports.

- (ii) the breaches of the Minimum Beach Width requirement set out in paragraph 39(d) above;

Particulars

The Joint Applicants refer to paragraph 40(f) above.

- (iii) revisions to the Original Design set out in paragraph 40(b) above;

Particulars

- i. The use of the Blanket Drain, rather than the base drain as originally planned, had the effect that sand tailings below the drain, as well as much of the sand tailings behind it, were left saturated (Panel Report, page 10). The Blanket Drain was called upon to carry nearly all of the seepage as the dam grew higher and the impoundment of the dam larger with time. The Blanket Drain became increasingly unable to do so (Panel Report at page 28).*
- ii. The crest of dike 1A (containing slimes) was located approximately 120 metres from the crest of dike 1, which increased the risk of mixing of slimes and sands. Furthermore, a high level of water was allowed to accumulate in the reservoir of dam 1A, which in turn caused the tailings downstream of that dam to remain saturated (994 Report, pages 66, 69 and 82).*
- iii. The Overflow Channel introduced slimes into the Dike 1 reservoir, disturbing the separation of sands and slimes which had been important to the Original Design (Panel Report, page 39-40).*

Further particulars may be provided after discovery and the filing of expert reports.

- (iv) ongoing structural problems with both the main and secondary galleries;

Particulars

- i. The main and secondary galleries played important roles in the proper drainage of the dam. Were either of the galleries to collapse, uncontrolled release of tailings from the reservoir or failure of the dam would be possible (Panel Report, page 11).*
- ii. By July 2012, it was apparent that jet grouting had not cured the problems with the main and second galleries referred to in paragraph 40(a) above (Panel Report, page 11);.*
- iii. By reason of its ongoing problems, the secondary gallery could not support tailings higher than El. 845 metres, in circumstances where the tailings it supported were already close to, if not in excess of, that elevation. (Panel Report, page 11). The ongoing problems also meant work commenced on the construction of the Auxiliary Spillway as a replacement decant for the Dike 1 and 2 reservoirs (Panel Report, pages 11 and B.B1-34).*

Further particulars may be provided after discovery and the filing of expert reports.

- (v) saturation of sand tailings to an extent that was not anticipated in the Original Design as referred to in paragraph 40(g) above;

Particulars

The Joint Applicants refer to paragraphs 39(a) and 39(d) above.

Further particulars may be provided after discovery and the filing of expert reports.

- (i) Samarco did not have an adequate emergency action plan in place with respect to the Fundão Dam;

Particulars

The absence of an emergency action plan in the event of failure of one or both of the main or secondary galleries was noted in a report from the ITRB dated October 2011 at page 14.

Further particulars may be provided after discovery and the filing of expert reports.

- (j) Samarco had not resettled communities living downstream of the Fundão Dam;

Particulars

Since at least August 2011, Samarco's board of directors had considered relocation of communities located down valley from the Germano Complex. On or around 8 August 2012, the board requested that Samarco prioritise efforts to resettle communities living close to tailings dams.

Further particulars may be provided after discovery and the filing of expert reports.

- (k) in the premises of subparagraphs 40(a)-(j) above:
 - (i) Samarco was not safely managing the operation of the Fundão Dam;
 - (ii) the Germano mining operation was exposed to a heightened risk of interruption arising out of the potential need to shut down the Fundão Dam due to structural repair works or dam failure.

G.3 Problems as at 30 September 2012

41. Following 8 August 2012, and in any event by no later than 30 September 2012, it was the case that (**September 2012 Information**):

- (a) the matters the subject of the August 2012 Information were continuing;
- (b) the left abutment of the Fundão Dam was realigned from the Original Design by setting it back behind the secondary gallery (**Setback**);
- (c) the Setback:
 - (i) was constructed over areas where beach encroachment had occurred, or where slimes tailing had been deposited, including as set out in paragraph 40(b) above and the particulars subjoined thereto;
 - (ii) was thereby susceptible to structural instability;
 - (iii) had been undertaken without consultation with Pimenta or the ITRB;

Particulars

i. Transcript of testimony of Joaquim Pimenta de Avila, page 30 042 Pimenta KT_243_550_Audio(1).wma.

ii. ITRB report dated 19 October 2012.

- (d) contrary to the matters set out at 39(c) above, the operations manual for the Fundão Dam was not updated to address the Setback;

Particulars

994 Report, page 233.

- (e) in the premises of subparagraphs 41(a)-(d) above:
 - (i) Samarco was not safely managing the operation of the Fundão Dam;

- (ii) the Germano mining operation was exposed to a heightened risk of interruption arising out of the potential need to shut down the Fundão Dam due to structural repair works or dam failure.

G.4 Problems after 30 September 2012 and prior to 27 August 2014

42. In the period following 30 September 2012 until around 27 August 2014, it was the case that (**Pre-August 2014 Information**):

- (a) the Fundão Dam continued to experience numerous structural problems;

Particulars

- i. In about November 2012, a sinkhole appeared in the tailings overlying the secondary gallery at the dam (Panel Report, pages 11, B.B8-6). It occurred just upstream of the Setback.*
- ii. In about January 2013, a longitudinal crack was discovered in the roof of module 14 of the main gallery (ITRB report April 2013, page 6).*
- iii. In about February 2013, three-dimensional seepage modelling of the dam at an elevation of 920 metres showed that additional drains would be needed at the abutments if seepage breakout were to be prevented (Panel Report, page 11)*
- iv. In about March 2013, seepage and ponding of surface water appeared at the left abutment of the dam at an elevation of 855 metres (Panel Report, pages 11, and B.B8-7).*
- v. In about June 2013, further seepage appeared at the left abutment of the dam at an elevation of 855 metres (Panel Report, pages 11, and B.B8-8 and 9). There were upwellings and surges observed at the left abutment around this time (ITRB report January 2014, page 4).*
- vi. In about November 2013, further seepage and cracks appeared at the left abutment of the dam (Panel Report, pages 11, and B.B8-10).*
- vii. In about December 2013, further seepage and upwelling occurred at an elevation of 860 metres and cracking appeared at an elevation of 875 metres at the left abutment (Panel Report, pages 11, and B.B8-11 and 12).*

- (b) significant changes from the Original Design had been made to the Fundão Dam;

Particulars

- i. Between about April 2013 and June 2013, the design of the dam was further revised to include a buried drain and a rockfill trench at El. 855m at the left abutment (Panel Report, pages 11, B.B1-23 and 25 and B.B8-7-10).*

- ii. *In about November 2013, the design of the dam was further revised to include a buried drain at El.860m at the left abutment, which connected to the El.855m buried drain (Panel Report, pages 11, B.B1-24).*
- iii. *In about December 2013, the rockfill trench at El.855m was extended by the construction of an open channel which conveyed the water collected from the buried drains at El. 855m and El. 860m across the setback platform, thereby allowing the continued raising of the left setback without burying the rockfill trench (Panel Report, page B.B1-26).*
- iv. *Between about September 2013 to June 2014, the design of the dam was further revised to include the Vale Toe Drain which collected and conveyed seepage from the Fabrica Nova Waste Pile to an area downstream of Dike 1 (Panel Report, page B.B1-22).*
- v. *Due to concerns about the inadequate capacity of the Auxiliary Spillway that had been constructed to replace the decommissioned main and secondary galleries, it became necessary to construct a further decant structure for the Dike 1 and 2 reservoirs. Construction on the 4th Spillway commenced from around June 2013 and was completed in around September 2015, although the 4th Spillway was operative from around November 2014 (Panel Report, page B.B1-35).*

Further particulars may be provided after discovery and the filing of expert reports.

- (c) structural problems continued to arise, notwithstanding earlier attempts by Samarco to address structural issues;

Particulars

In about July 2014, seepage appeared at the right abutment of the dam at an elevation of 855 metres (Panel Report, pages B.B8-13 and 14).

This followed a series of ongoing structural problems, as to which the Joint Applicants refer to paragraphs 40(a), 40(c) and 42(a) above.

Further particulars may be provided after discovery and the filing of expert reports.

- (d) as at around early 2013, Samarco had loaded tailings above the second gallery in excess of what the second gallery could support;

Particulars

Panel Report, page 11.

- (e) the Setback:
 - (i) continued to be used, despite:
 - (A) the matters set out in paragraph 41(c) above;

- (B) ongoing structural problems encountered at the left abutment of the dam, to which the Setback was proximate;

Particulars

The Joint Applicants refer to the problems at the left abutment set out in the particulars subjoined to paragraph 42(a) above.

- (C) having originally been intended to only be a temporary measure;

Particulars

The Setback was originally implemented because the dam could not continue to be raised over the Secondary Gallery until repairs had been made, and then (after the decision was made to abandon repairs to that gallery) until after the gallery had been plugged (Panel Report, page 44).

- (ii) grew significantly larger;

Particulars

In 2013, the height of the Setback rose at an average rate of 18 metres per year, and in the month of September 2013, the height rose by 3 metres, a monthly record (Panel Report, page 13).

Further particulars may be provided after discovery and the filing of expert reports.

- (iii) as it grew larger, became underlain by an increasing proportion of slimes in the interbedded region;

Particulars

Panel Report, page 45.

Further particulars may be provided after discovery and the filing of expert reports.

- (f) there were continuing significant increases in the volume of tailings being deposited in the Fundão Dam, including by Vale;

Particulars

i. the Joint Applicants refer to the particulars subjoined to paragraph 40(d) and (e) above, which matters continued to arise in the period from 30 September 2012 onwards.

*ii. The increase in tailings was attributable, in part, to pellet production commencing in March 2014 under the Fourth Pellet Plant Project (**P4P Project**). The project involved the construction of a third ore concentrator and additional mining capacity at the Germano Complex, which was planned to boost Samarco's pellet production capacity by around 37.5%. The project did not involve the construction of a new tailings dam to*

accommodate the increase in tailings due to the increase in production, such that the Fundão Dam was required to deal with increased tailings waste from increased production.

- (g) the height of the Fundão Dam rose faster than limits set out in Samarco's 2012 Operations Manual and/or recommended in technical literature;
- (h) there were continuing repeated breaches of the Minimum Beach Width requirement;

Particulars

The Overflow Channel was operative for a second period between July 2013 and December 2013, once the Setback was in place. This contributed to the diminishment of the length of the beach, and particularly impacted the beach area already shortened due to the retreat of the dam axis towards the rear part of the reservoir: 994 Report, page 326.

- (i) there was saturation of sand tailings to an extent that was not anticipated in the Original Design;

Particulars

Panel Report, section 4.3.

- (j) by around January 2014, it had become apparent that the Blanket Drain was no longer sufficient and that additional drains would be needed at the left abutment;

Particulars

Panel Report, page 13.

Further particulars may be provided after discovery and the filing of expert reports.

- (k) there was a heightened risk of the structural integrity of the Fundão Dam being compromised and dam failure by reason of:
 - (i) the matters set out in paragraphs 40(h) and 42(e) above;
 - (ii) the increased volume of tailings deposits and growth in the dam as set out in paragraphs 42(f)-(g) above;

Particulars

The widening of the dam embankment and impoundment relative to the Blanket Drain, as referred to in the particulars subjoined to paragraph 40(h)(i) above, had continued, with its detrimental effects becoming increasingly pronounced (Panel Report, pages 29-31).

- (iii) the ongoing breaches of the Minimum Beach Width set out in paragraph 39(d) above;

Particulars

The Joint Applicants refer to paragraph 40(f) above.

- (iv) the drainage limitations set out at paragraph 42(j) and ongoing unanticipated extent of saturation of sand tailings set out in paragraph 42(i) above;

Particulars

The Joint Applicants refer to paragraphs 39(a) and 39(d) above.

- (l) Samarco did not have an adequate emergency action plan in place with respect to the Fundão Dam;
- (m) Samarco had not resettled communities living downstream of the Fundão Dam;
- (n) in the premises of subparagraphs 42(a)-(m) above:
 - (i) Samarco was not safely managing the operation of the Fundão Dam;
 - (ii) the Germano mining operation was exposed to a heightened risk of interruption arising out of the potential need to shut down the Fundão Dam due to the need to perform structural repair works or dam failure.

G.5 Problems from 27 August 2014 onwards

43. At all material times from 27 August 2014 until the time of the Fundão Dam's collapse on 5 November 2015 (in Brazilian time), it was the case that (**Post-August 2014 Information**):

- (a) the matters the subject of the Pre-August 2014 Information were continuing;
- (b) in late August 2014, a series of cracks were discovered in the Fundão Dam which:
 - (i) were more extensive than anything that had occurred previously at the dam;
 - (ii) extended behind the dam crest, emerged at the toe of the slope, and encompassed most of the slope of the dam, alternatively the left abutment; and

- (iii) were accompanied by shallow saturation at the toe of the slope of the dam, alternatively the left abutment;

Particulars

Panel Report, pages 14-15.

- (c) in about September 2014 and December 2014, Pimenta:
 - (i) inspected the Fundão Dam;
 - (ii) during the above inspection, observed cracking at a retreat dike;
 - (iii) advised Samarco that based on his inspection, static liquefaction could be present at the Fundão Dam;
 - (iv) further advised Samarco that a reinforcement embankment for the foundation slope, which Samarco was constructing in order to stabilise the areas affected by the structural incidents in late August (**Reinforcement Berm**):
 - (A) needed to be constructed in a manner which properly had regard to the risk of static liquefaction being present;
 - (B) did not, as at 15 December 2014, meet the above requirement;
 - (v) made various recommendations to Samarco as to how to address the situation;

Particulars

- i. Pimenta inspected the dam on or around 4 September 2014 and 15 December 2014.*
- ii. Pimenta issued reports to Samarco regarding the above inspections, in which he advised as to the possibility of static liquefaction and suggested various steps be taken to address the situation.*
- iii. In his report issued following the September inspection, Pimenta made various recommendations such as verifying that a reinforcement embankment for the foundation slope, which Samarco was constructing in order to stabilise the areas affected by the structural incidents in late August (**Reinforcement Berm**) would adequately address potential static liquefaction and installing piezometers to assist with stability analysis; monitoring the levels of piezometers daily.*

iv. In his report issued following the December inspection. Pimenta made various recommendations relating to the construction having regard to the possibility of static liquefaction, and inclusion of additional drainage. He made criticisms of the Reinforcement Berm, such as noting that the berm initially constructed still do not meet recommended safety stipulations.

Further particulars may be provided after discovery and the filing of expert reports.

- (d) Samarco did not follow all of Pimenta's above recommendations.

Particulars

As best as the Joint Applicants can say prior to discovery, Samarco did not follow recommendations by Pimenta for:

- i. there to be daily monitoring of piezometer data;*
- ii. the Reinforcement Berm to be constructed subject to certain safety stipulations to account for the possible presence of static liquefaction;*
- iii. additional drainage to be installed.*

Further particular may be provided after the completion of discovery and the filing of expert reports.

- (e) on or about 20 November 2014, the ITRB recommended that work be undertaken as quickly as possible, and that every effort be made to prioritise the completion of the work, to enable the axis at the Setback to be returned to its intended position under the Original Design;

Particulars

ITRB – Report No 11 dated 20 November 2014, page 11.

- (f) Samarco did not follow this recommendation, and instead delayed the completion of the recommended works;
- (g) in the premises of subparagraphs 43(a)-(f) above:
- (i) Samarco was not safely managing the operation of the Fundão Dam;
 - (ii) the Germano mining operation was exposed to an increased risk of interruption arising out of the potential need to shut down the Fundão Dam due to structural repair works or dam failure;
 - (iii) further or alternatively, there was, by no later than 27 August 2014, a significant risk that the Fundão Dam might fail.

G.6 Consequential risks

44. At all material times, it was likely that a failure of the Fundão Dam would cause:

- (a) loss of life, potentially on a large scale;
- (b) serious adverse impacts to land and property downstream;
- (c) serious adverse impacts to water resources downstream;

Particulars

The likelihood of those consequences arose by reason of, and/or were evidenced by, inter alia, the following matters:

- i. the matters set out in paragraphs 35-37;*
 - ii. the failure to relocate residents of the nearby Bento Rodrigues and the failure to implement an appropriate emergency action plan, as to which the Joint Applicants refer to paragraphs 40(i)-(j), 41(a), 42(l)-42(m) and 43(a) above;*
 - iii. the potential toxicity of tailings stored in the Fundão Dam;*
 - iv. the large size of the Fundão Dam, and the large and increasing volume of tailings stored within the dam from the Germano Complex including as a result of the P4P Project, and from Vale's nearby mining operations, as to which the Joint Applicants refer to paragraphs 40(d) and 42(f) above;*
 - v. the known scale and seriousness of damage caused by reported collapses of other tailings dams prior to the Relevant Period.*
- (d) a prolonged shutdown of, or prolonged period of significantly reduced, production at the Germano Complex; and

Particulars

The risk of production at the Germano Complex being shut down or significantly reduced for a significant period of time arose by reason of, and/or was evidenced by, inter alia, the facts that:

- i. the ability to dispose of tailings into the Fundão Dam was essential to the continued operation of the Germano Complex, as to which the Joint Applicants refer to paragraphs 32, 38 and 42(f) above ; and*
 - ii. the likelihood of regulatory action by Brazilian authorities to suspend operations at the Germano Complex, potentially for a significant period of time, in the event of a failure of the Fundão Dam.*
- (e) Samarco falling short of its forecasts for production and revenues.

(General Consequential Risks).

45. At all material times, it was likely that a prolonged interruption of operations at the Fundão Dam and/or a dam failure would cause significant adverse consequences for BHP because:
- (a) Samarco would fall materially short of BHP's forecasts for Samarco contributions to BHP earnings;
 - (b) the value of BHP's investment in Samarco would be significantly impaired;
 - (c) (in the case of a dam collapse) Samarco and/or BHP would be exposed to liability:
 - (ii) for substantial remediation costs;
 - (iii) to compensate affected persons for damage caused by a dam failure and/or to liability to penalties for civil or criminal wrongs;
 - (d) BHP would be exposed to significant reputational damage,
- (BHP Consequential Risks).**

H. CONTINUOUS DISCLOSURE CONTRAVENTIONS

H.1 Awareness of information and risks

46. At all material times from at least 2012 onwards, BHP's Representatives on Samarco's board of directors:
- (a) regularly attended meetings of Samarco's board of directors; and
 - (b) by reason of their position as members or alternate members of Samarco's board of directors, read or ought to have read the minutes of any meetings which they did not attend.
47. Between 2009 and 2015, matters relating to:
- (a) the August 2012 Information;
 - (b) the September 2012 Information;
 - (c) the Pre-August 2014 Information;
 - (d) the Post-August 2014 Information; and

- (e) the General Consequential Risks;

were discussed:

- (f) at meetings of Samarco's board of directors;

Particulars

Discussions about the above matters took place in (at least) board meetings held on 2 December 2009, 12 March 2010, 22 September 2010, 6 April 2011, 10 August 2011, 8 December 2011, 8 August 2012, 7 December 2012, 4 December 2013, 2 April 2014, and 10 December 2014.

Further particulars may be provided after discovery.

- (g) at meetings of the ITRB, or in reports prepared by the ITRB;

Particulars

Discussions about the above matters took place in (at least) meetings of, or reports issued by, the ITRB in July 2009, on 7 August 2009, on 22 September 2009, in April 2011, in July 2011, in October 2011, in May 2012, on 19 October 2012, in April 2013, in September 2013, in January 2014; on 20 November 2014, and 6 April 2015.

Further particulars may be provided after discovery.

- (h) at meetings of various Samarco committees, which committees reported to Samarco's board of directors, or to members of committees which reported to Samarco's board of directors.

Particulars

Discussions about the above matters took place in, at least, meetings of the Samarco Operations Committee and Operational Performance Subcommittee (or similarly named committees) held from time to time.

Further particulars may be provided after discovery.

48. BHP Ltd was aware (within the meaning of ASX Listing Rule 19.12):

- (a) by no later than 8 August 2012, of the August 2012 Information;
- (b) by no later than 30 September 2012, of the September 2012 Information;
- (c) by no later than in the period from 30 September 2012 until around 27 August 2014, of the Pre-August 2014 Information;

- (d) at all material times from no later than around 27 August 2014 until 5 October 2015 (Brazilian time), of the Post-August 2014 Information;
- (e) at all material times, of:
 - (i) the General Consequential Risks; and
 - (ii) the BHP Consequential Risks,

(Risks).

Particulars

One or more executive officers (prior to 30 April 2013, within the meaning of Listing Rule 19.12 at that time) or officers (from 1 May 2013, within the meaning of Listing Rule 19.12 at that time) of BHP had, or ought reasonably to have, come into possession of each of the above items of information in the course of the performance of their duties as a director or executive officer of BHP, by reason of:

- i. the matters set out in paragraphs 11-17, 25-30, and 46-47 above;*
- ii. the fact that the ITRB reported to Samarco's board of directors, or to committees of Samarco which reported to Samarco's board;*
- iii. the fact that the Fundão Dam was of critical importance to the operation of the Germano Complex, particularly given that the dam was required to store increased tailings waste as a result of the Third Pellet Plant Project and Fourth Pellet Plant Project;*
- iv. the extent of BHP's investment in Samarco, and the importance of that investment to BHP, as to which the Joint Applicants refer to paragraphs 21-22 above;*
- v. BHP contributing funding towards the P4P Project, at a significant cost to BHP, such that BHP was or ought to have been aware that the P4P Project would lead to an increase in tailings being deposited in the Fundão Dam;*
- vi. BHP having made representations concerning its commitment to safety and environmental sustainability, as to which the Joint Applicants refer to and repeat paragraphs 54-59 below;*
- vii. Wilson stating that BHP's board of directors had identified the risk of the collapse of the Fundão Dam, prior to the dam's actual collapse, as reported in an article in the Australian Financial Review dated 1 November 2017;*
- viii. on or about 21 October 2013, at the request of the Public Ministry for the State of Minas Gerais, the Pristino Institute issued a report raising various concerns about the Fundão Dam. BHP read that report at or about the time of its publication, as to which the Joint Applicants refer to a statement to that effect made by Jac Nasser (Nasser), then Chairman of BHP, at BHP's annual general meeting held on 19 November 2015;*

ix. by reason of the matters referred to in these particulars, it may be inferred that BHP Representatives on Samarco's board of directors and Samarco committees reported to the BHP GMC on matters relating to the information referred to in paragraphs 48(a)-(e) above.

49. By reason of the matters set out in the preceding paragraph, BHP Ltd was aware, for the purposes of Rule 3.1 of the ASX Listing Rules, and was aware, for the purposes of s 674(2) of the Corporations Act, of the respective information and risks set out in paragraphs 48(a)-(e) above, at the respective times set out therein.

H.2 Failure to make continuous disclosure

50. Each of the:

- (a) August 2012 Information;
- (b) September 2012 Information;
- (c) Pre-August 2014 Information;
- (d) Post-August 2014 Information;
- (e) ~~the~~ Risks,

or alternatively, any combination thereof, constituted information that:

- (f) a reasonable person would expect to have a material effect on the price or value of BHP ~~Limited Securities~~ ASX Shares; and
- (g) was not generally available, within the meaning of s 676 of the Corporations Act, during the Relevant Period.

51. By reason of the matters set out in paragraphs 7 and 48-50 above, BHP Ltd was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act to immediately inform the ASX of:

- (a) the August 2012 Information, and the Risks (as they existed at the time), by no later than 8 August 2012;
- (b) the September 2012 Information, and the Risks (as they existed at the time), by no later than 30 September 2012;
- (c) the Pre-August 2014 Information, and the Risks (as they existed at the time), at all material times between 30 September 2012 and 27 August 2014;

(d) the Post-August 2014 Information, and the Risks (as they existed at the time), at all material times between 27 August 2014 and 9 November 2015.

52. In respect of each of the disclosures referred to in the preceding paragraph which were required to be made (**Required Disclosures**), BHP Ltd did not inform the ASX at any time prior to 9 November 2015, and thereby contravened ASX Listing Rule 3.1.

53. In the premises of the preceding paragraph, in respect of each of the Required Disclosures, BHP Ltd contravened s 674(2) of the Corporations Act (**Continuous Disclosure Contraventions**).

I. MISLEADING OR DECEPTIVE CONDUCT

I.1 BHP Ltd's Statements prior to 9 November 2015

54. On or about 21 September 2011, BHP Ltd published or caused to be published the BHP its FY2011 annual report on or to the ASX, in which it stated *inter alia* that:

- (a) BHP operated in an industry where the foundation for everything it did was its commitment to the health and safety of its people and sustainability of the environment and communities in which it worked;
- (b) BHP's approach to sustainability was reflected in *Our BHP Billiton Charter*, which defined BHP's values, purpose and how BHP measured success, and the *BHP Billiton Sustainable Development Policy*, which defined BHP's public commitments to safety, health, and environmental and social responsibility;
- (c) identifying and managing material risk for BHP included focusing on sustainability-specific risks for its people, the environment and its host communities;
- (d) BHP's licence to operate included a central focus on health, safety, environment and the community, and making a positive difference to its host communities; and
- (e) BHP's overriding commitment was to safety: ensuring the safety of its people, respecting its environment and the communities in which it worked, and this commitment transcended everything BHP did and guided every aspect of its work.

Particulars

BHP FY2011 annual report, pages 4, 45, 51 and 81.

55. On or about 18 September 2012, BHP Ltd published or caused to be published the BHP FY2012 annual report on or to the ASX, in which it stated *inter alia* that:

- (a) supporting BHP's communities was part of *Our BHP Billiton Charter* value of Sustainability, which also included putting the health and safety of its people first and being environmentally responsible;
- (b) through the application of BHP's risk management processes, BHP identified material catastrophic operational risks and implemented the critical controls and performance requirements to maintain control effectiveness;
- (c) BHP's *Our BHP Billiton Charter* value of Sustainability reflected BHP's priority of putting health and safety first, being environmentally responsible and supporting its communities;
- (d) tailings dams were constructed and operated to engineering standards, and monitored and assessed to manage material risks, including the risk of failure;
- (e) BHP's licence to operate included a central focus on health, safety, environment and the community and making a positive difference to its host communities; and
- (f) BHP's overriding commitment was to safety: ensuring the safety of its people, respecting its environment and the communities in which it worked, and this commitment transcended everything BHP did and guided every aspect of its work.

Particulars

BHP FY2012 annual report, pages 4, 12, 46, 49 and 81.

56. On or about 25 September 2013, BHP Ltd published or caused to be published the BHP FY2013 annual report on or to the ASX, in which it stated *inter alia* that:

- (a) health and safety always came first;
- (b) BHP's primary responsibility was the health, safety and wellbeing of its people;
- (c) BHP's priorities in the near term were *inter alia* to protect its people, improve the health and safety of its operations, and support sustainable development of its host communities;
- (d) eliminating risk was a critical, continual focus of everyone at BHP;

- (e) BHP was guided by the BHP Charter values of *inter alia* Sustainability;
- (f) BHP's overriding commitment to ensuring the safety of its people and respecting the environment and the communities in which it worked informed everything it did and influenced every aspect of its work;
- (g) BHP's BHP Billiton Charter value of Sustainability reflected its priority of putting health and safety first, being environmentally responsible and supporting its communities;
- (h) BHP remained vigilant in its focus on material safety risks, ensuring it had the appropriate controls in place to address these risks; and
- (i) Tailings dams were operated, monitored and assessed to manage material risks, including the risk of failure.

Particulars

BHP FY2013 annual report, pages 6, 7, 8, 52, 53 and 56.

57. On or about 25 September 2014, BHP Ltd published or caused to be published the BHP its FY2014 annual report on or to the ASX, in which it stated *inter alia* that:

- (a) BHP maintained a relentless focus on the health and safety of its people and the communities in which it operated;
- (b) BHP would continue to relentlessly identify and manage material health and safety risks to protect its people and communities;
- (c) BHP was guided by the BHP Charter values of *inter alia* Sustainability;
- (d) BHP's overriding commitment to ensuring the safety of its people and respecting the environment and the communities in which it works informed everything it did and influenced every aspect of its work;
- (e) through the application of BHP's risk management processes, BHP identified catastrophic operational risks and implemented the critical controls and performance requirements to maintain control effectiveness; and
- (f) BHP had systems in place to identify and effectively manage foreseeable crises and emergencies, including by undertaking annual assessments to verify that critical controls were effective in managing each material risk.

Particulars

BHP FY2014 annual report 2014, pages 8, 9, 10, 25 and 52.

58. On or about 23 September 2015, BHP Ltd published or caused to be published the BHP ~~its~~ FY2015 annual report on or to the ASX, in which it stated *inter alia* that:
- (a) safety was the first priority for everyone at BHP;
 - (b) the safety and health of its people and of the broader communities in which it operated were central to its success;
 - (c) it would continue to operate sustainably with a focus on *inter alia* protecting its people and improving the health and safety of its operations; and
 - (d) identifying and managing fatal and material risk was a critical component of its management strategy.

Particulars

BHP FY2015 annual report, pages 5, 6 and 16.

59. By reason of the matters set out in paragraphs 54-58 above, BHP Ltd represented, from prior to and throughout the Relevant Period, that:
- (a) the primary consideration in every aspect of BHP's business was the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business; and
 - (b) it had effective systems and processes in place to identify and effectively manage risks to the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business, including the Samarco mining operation,

(the **Representations**).

Particulars

The Representations were partly express and partly implied.

To the extent that they were express, the Joint Applicants refer to paragraphs 54-58 above.

To the extent that they were implied, they were to be implied from the matters referred to in paragraphs 54-58 above.

60. BHP Ltd did not, at any time before 9 November 2015, withdraw or qualify any of the Representations and each Representation was a continuing representation throughout the Relevant Period.

I.2 Misleading or Deceptive Conduct Contraventions

61. The conduct of BHP Ltd pleaded in paragraphs 54-60 above was conduct:
- (a) in trade or commerce in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or
 - (b) in relation to a financial product or financial services (being BHP ASX Shares) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act.
62. By no later than 8 August 2012 and at all times thereafter until the end of the Relevant Period, the Representations were misleading or deceptive, or likely to mislead or deceive.

Particulars

By no later than 8 August 2012 and at all material times thereafter until the end of the Relevant Period, BHP Ltd: (i) acquiesced in Samarco not safely managing the operation of the Fundão Dam; and/or (ii) failed to ensure that Samarco was safely managing the operation of the Fundão Dam.

By no later than 27 August 2014 and at all material times thereafter until the end of the Relevant Period, BHP Ltd: (i) acquiesced in Samarco managing the operation of the Fundão Dam in a manner that exposed the Fundão Dam to a significant risk of failure; and/or (ii) failed to ensure that the Fundão Dam was managing the operation of the Fundão Dam in a manner that did not expose the Fundão Dam to a significant risk of failure.

Further particulars may be provided after discovery and the filing of expert reports.

63. By reason of the matters pleaded in paragraphs 61 and 62 above, on and from no later than 8 August 2012 and at all material times thereafter until the end of the Relevant Period, BHP Ltd contravened:
- (a) s 12DA(1) of the ASIC Act; and
 - (b) s 1041H(1) of the Corporations Act,
- (the **Misrepresentations Contraventions**).

J. THE DAM FAILURE

64. At around 3.30pm on 5 November 2015 in Brazil (around 4.30am AEST on 6 November 2015 in Australia), the Fundão Dam failed (**Dam Failure**):
- (a) releasing a significant volume of tailings; and

- (b) resulting in, among other things:
- (i) the shutdown of the Germano Complex, with it yet to be re-opened as at the date of the commencement of this proceeding;
 - (ii) BHP's future iron ore production capabilities being revised downwards;

Particulars

BHP's share of production of iron ore pellets was 5.2 Mt in FY2016, down from 14.5 Mt in FY2015 and 11 Mt in FY2014 (BHP FY2016 annual report, page 58; BHP FY2015 annual report, page 83; BHP FY2014 annual report 2014, page 41).

Further particulars may be provided after discovery.

- (iii) BHP's iron ore cashflow and/or earnings generated by the Samarco mining operation being lost or significantly reduced for a substantial period of time; and

Particulars

BHP's consolidated income for iron ore for FY2016 was US\$10.538B, down from US\$14.753B in FY2015 and US\$21.356B in FY2014 (BHP FY2016 annual report, page 68).

Further particulars may be provided after discovery.

- (iv) BHP being exposed to:
 - (A) substantial remediation costs; and
 - (B) significant reputational damage.

K. INFORMATION DISCLOSURE AND SHARE PRICE IMPACTS

65. On 6 November 2015, BHP Ltd made an announcement on the ASX that there had been a serious incident at Samarco (the **6 November 2015 Announcement**).

Particulars

BHP ASX release entitled "INCIDENT AT SAMARCO" dated 6 November 2015.

66. On 9 November 2015, BHP Ltd made an announcement on the ASX about the failure of the Fundão Dam and some of the consequences of that failure (the **9 November 2015 Announcement**).

Particulars

BHP ASX release entitled "UPDATE: INCIDENT AT SAMARCO" dated 9 November 2015.

67. Following the 6 November 2015 Announcement and/or the 9 November 2015 Announcement, the price of:
- (a) the BHP ASX Shares;
 - (b) the BHP LSE Shares; and/or
 - (c) the BHP JSE Shares,
- declined significantly.

Particulars

The price of the BHP ASX Shares declined from a closing price of \$23.28 on 5 November 2015 to a closing price of \$18.09 on 30 November 2015.

The price of the BHP LSE Shares declined from a closing price of GBP 10.34 on 5 November 2015 to a closing price of GBP 7.96 on 30 November 2015.

The price of the BHP JSE Shares declined from a closing price of ZAR 221.59 on 5 November 2015 to a closing price of ZAR 170.30 on 30 November 2015.

L. CONTRAVENTIONS CAUSED LOSS

L.1 BHP ASX Shares

68. During the Relevant Period, the BHP ASX Share Market was a market:
- (a) regulated by, inter alia, ss 674(2) and 1041H of the Corporations Act, Rule 3.1 of the Listing Rules and s 12DA of the ASIC Act;
 - (b) in which the price at which BHP ASX Shares traded on the ASX was, and ~~or~~ was reasonably expected to have been, influenced by the material information concerning BHP that was published on the ASX or that otherwise became publicly available;
 - (c) in which material information, namely the August 2012 Information, September 2012 Information, Pre-August 2014 Information, Post-August 2014 Information, General Consequential Risks and BHP Consequential Risks, had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of the BHP ASX Shares; and

(d) in which misleading or deceptive conduct, namely the Representations, had occurred, which a reasonable person would expect to have a material effect on the price or value of BHP ASX Shares.

69. During the Relevant Period:

(a) the Continuous Disclosure Contraventions; and

(b) the Misrepresentations Contraventions,

(collectively, the **Contraventions**) caused the price at which BHP ASX Shares traded on the ASX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them).

Particulars

This is to be inferred from paragraphs 64-67 above and the particulars subjoined thereto.

Particulars of the extent to which the Contraventions caused the price at which BHP ASX Shares traded on the ASX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) will be provided after the filing of expert reports.

70. Further or in the alternative to paragraphs 68 and 69 above, the Joint Applicants and some of the Group Members who acquired an interest in BHP ASX Shares during the Relevant Period would not have acquired an interest in the BHP ASX Shares if the Contraventions that had occurred at the time of their acquisition (or any of them) had not occurred.

Particulars

The Joint Applicants and some Group Members acquired an interest in the BHP ASX Shares in reliance upon the Representations.

The Joint Applicants would not have acquired an interest in the BHP ASX Shares had the information the subject of the Required Disclosures (or any of them) been disclosed, or had the Representations been retracted, corrected or qualified prior to such acquisition.

The identities of all those Group Members which or who would not have acquired an interest in BHP ASX Shares had information the subject of the Required Disclosures (or any of them) been disclosed or had the Representations been retracted, corrected or qualified prior to such acquisition, will be obtained and provided following opt out, the determination of the Joint Applicants' claims and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

L.2 BHP LSE Shares

71. During the Relevant Period, the BHP LSE Share Market was a market in which the price at which BHP LSE Shares traded on the LSE was, and was reasonably expected to have been, influenced by material information concerning BHP that ~~was published on the LSE Share Market or that otherwise became publicly available to the BHP LSE Share Market.~~

72. During the Relevant Period, material information concerning BHP disclosed by BHP Ltd to the ASX became publicly available to the BHP LSE Share Market.:

~~(a) — material information disclosed by BHP Ltd on the ASX and/or made publicly available to the BHP ASX Share Market was also made publicly available by BHP to the BHP LSE Share Market; and~~

Particulars

~~The Joint Applicants refer to~~

- ~~i. paragraphs 9-10 above and the particulars subjoined thereto; and~~
- ~~ii. BHP's practice of making material information disclosed on the ASX publicly available on the "Media and insights" and/or the "Investor centre" pages on the website www.bhp.com.~~

Material information concerning BHP disclosed by BHP Ltd to the ASX became publicly available to the BHP LSE Share Market by reason of the fact that company announcements disclosed to the ASX became publicly available on the ASX website www.asx.com.au

Further particulars may be provided after discovery.

~~(b) — the Representations were made to the BHP LSE Share Market.~~

Particulars

~~The annual reports referred to at paragraphs 54-58 above were published by BHP for the BHP ASX Share Market, the BHP LSE Share Market and the BHP JSE Share Market.~~

73. Further and in the alternative to paragraphs 71 and/or 72 above, during the Relevant Period, the BHP LSE Share Market was a market in which the price at which BHP LSE Shares traded on the LSE was influenced by the price and/or movements in the price of BHP ASX Shares and/or ~~BHP JSE Shares.~~

Particulars

This is to be inferred from paragraphs 9, 10 and/or 67 above and the particulars subjoined thereto.

Further particulars will be provided after the filing of expert reports.

74. By reason of the matters pleaded at paragraphs 71, 72 and/or 73 above, during the Relevant Period, the Contraventions caused the price at which BHP LSE Shares traded on the LSE to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them).

Particulars

This is to be inferred from paragraphs 9, 10, 65, 66, 67, 71, 72 and/or 73 above the particulars subjoined thereto.

Particulars of the extent to which the Contraventions caused the price at which BHP LSE Shares traded on the LSE to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) will be provided following service of expert quantum evidence.

75. Further or in the alternative to paragraph 74 above, some of the Group Members who acquired an interest in BHP LSE Shares during the Relevant Period would not have acquired an interest in the BHP LSE Shares if the Contraventions that had occurred at the time of their acquisition (or any of them) had not occurred.

Particulars

The identities of all those Group Members which or who would not have acquired an interest in BHP LSE Shares had the Required Disclosures (or any of them) been disclosed or had the Representations been retracted, corrected or qualified prior to such acquisition, will be obtained and provided following opt out, the determination of the Joint Applicants' claims and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

L.3 BHP JSE Shares

76. During the Relevant Period, the BHP JSE Share Market was a market in which the price at which BHP JSE Shares traded on the JSE was, and was reasonably expected to have been, influenced by material information concerning BHP that ~~was published on the JSE Share Market or that otherwise~~ became publicly available to the BHP JSE Share Market.

77. During the Relevant Period, material information disclosed by BHP Ltd to the ASX became publicly available to the BHP JSE Share Market.:

- (a) ~~material information disclosed by BHP Ltd on the ASX and/or made publicly available to the BHP ASX Share Market was also made publicly available by BHP to the BHP JSE Share Market; and~~

Particulars

~~The Joint Applicants refer to~~

- ~~i. paragraphs 9-10 above and the particulars subjoined thereto; and~~
- ~~ii. BHP's practice of making material information disclosed on the ASX publicly available on the "Media and insights" and/or the "Investor centre" pages on the website www.bhp.com.~~

Material information concerning BHP disclosed by BHP Ltd to the ASX became publicly available to the BHP JSE Share Market by reason of the fact that company announcements disclosed to the ASX became publicly available on the ASX website www.asx.com.au

Further particulars may be provided after discovery.

~~(b) the Representations were made to the BHP JSE Share Market.~~

Particulars

~~The annual reports referred to at paragraphs 54-58 above were published by BHP for the BHP ASX Share Market, the BHP LSE Share Market and the BHP JSE Share Market.~~

78. Further or in the alternative to paragraphs 76 and/or 77 above, during the Relevant Period, the BHP JSE Share Market was a market in which the price at which BHP JSE Shares traded on the JSE was influenced by the price and/or movements in the price of BHP ASX Shares and/or BHP LSE Shares.

Particulars

This is to be inferred from paragraphs 9, 10 and/or 67 above and the particulars subjoined thereto.

Further particulars will be provided upon service of the Joint Applicants' expert quantum evidence.

79. By reason of the matters pleaded at paragraphs 76, 77 and/or 78 above, during the Relevant Period, the Contraventions caused the price at which BHP JSE Shares traded on the JSE to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them).

Particulars

This is to be inferred from the matters set out at paragraphs 9, 10, 65, 66, 67, 76, 77 and/or 78 above the particulars subjoined thereto.

Particulars of the extent to which the Contraventions caused the price at which BHP JSE Shares traded on the JSE to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) will be provided after the filing of expert reports.

80. Further or in the alternative to paragraph 79 above, some of the Group Members who acquired an interest in BHP JSE Shares during the Relevant Period would not have

acquired an interest in the BHP JSE Shares if the Contraventions that had occurred at the time of their acquisition (or any of them) had not occurred.

Particulars

The identities of all those Group Members which or who would not have acquired an interest in BHP JSE Shares had the Required Disclosures (or any of them) been disclosed or had the Representations been retracted, corrected or qualified prior to such acquisition, will be obtained and provided following opt out, the determination of the Joint Applicants' claim and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

M. LOSS OR DAMAGE SUFFERED BY THE JOINT APPLICANTS AND GROUP MEMBERS

81. Each of the Joint Applicants suffered loss and/or damage in relation to its interests in BHP ASX Shares by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

The loss suffered by each of the Joint Applicants will be calculated by reference to:

- i. the difference between the price at which it acquired its interests in BHP ASX Shares during the Relevant Period and the true value of those interests; or*
- ii. alternatively, the difference between the price at which it acquired its interests in BHP ASX Shares during the Relevant Period and the market price that would have prevailed had the Contraventions not occurred; or*
- iii. alternatively, on the days when the traded price of BHP ASX Shares fell as a result of the disclosure of information the subject of the Contraventions, the quantum of that fall; or*
- iv. alternatively, the difference between the price at which the Joint Applicants each acquired the BHP ASX Shares and whatever is "left in hand".*

Particulars of the Joint Applicants' losses will be provided after the filing of expert reports.

82. Group Members who acquired an interest in:

- (a) BHP ASX Shares;
- (b) BHP LSE Shares; and/or
- (c) BHP JSE Shares,

during the Relevant Period have suffered loss and/or damage in relation to their interests in those shares by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

The losses suffered by Group Members who acquired an interest in BHP ASX Shares, BHP LSE Shares and/or BHP JSE Shares during the Relevant Period will also be calculated in accordance with the particulars subjoined to paragraph 81 above but are not particularised in this statement of claim. Particulars in relation to Group Members' losses will be obtained and provided following opt out, the determination of the Joint Applicants' respective claims and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

83. The Joint Applicants claim the relief set out in the originating application on their own behalves and on behalf of the Group Members.

Dated: ~~16 August 2019~~ 7 September 2020



.....
Signed by Benjamin Phi
Lawyer for Vince Impiombato



.....
Signed by Andrew Watson
Lawyer for Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Trust)

This pleading was prepared by P W Collinson, one of Her Majesty's Counsel, E Levine and D Snyder of Counsel, and amended by P W Collinson, one of Her Majesty's Counsel, A D Pound and E Levine of Counsel.

ANNEXURE A**Impiombato's trade in BHP ASX Shares during the Relevant Period**

Date	Trade Type	Volume	Price per security	Transaction value
5 December 2014	Buy	1,000	\$30.68	\$30,713.75
12 December 2014	Buy	1,000	\$28.57	\$28,601.43
23 January 2015	Sell	1,000	\$29.24	\$29,208.99
2 February 2015	Sell	900	\$29.75	\$26,745.05
13 February 2015	Sell	100	\$32.14	\$3,195.05
28 October 2015	Buy	2,000	\$23.80	\$47,630.36
28 October 2015	Buy	3,000	\$23.85	\$71,581.69
30 October 2015	Buy	3,000	\$23.05	\$69,204.07
2 November 2015	Buy	2,000	\$22.89	\$45,808.36
6 November 2015	Buy	1,180	\$22.64	\$26,722.59
9 November 2015	Sell	11,180	\$21.79	\$243,366.04


ANNEXURE B**Klemweb's trade in BHP ASX Shares during the Relevant Period**

Date	Trade Type	Volume	Price per security	Transaction value
18 April 2013	Buy	1,650	Particulars to be provided	Particulars to be provided
17 December 2013	Buy	600	Particulars to be provided	Particulars to be provided
17 June 2015	Buy	1760	\$28.24	\$50,112.45

Certificate of lawyers

I, Benjamin Phi, certify to the Court that, in relation to the statement of claim filed on behalf of the Joint Applicants, the factual and legal material available to each of us at present provides a proper basis for each allegation in the pleading.

Date: ~~16 August 2019~~ 7 September 2020



.....
Signed by Benjamin Phi
Lawyer for Vince Impiombato

I, Andrew Watson, certify to the Court that, in relation to the statement of claim filed on behalf of the Joint Applicants, the factual and legal material available to each of us at present provides a proper basis for each allegation in the pleading.

Date: ~~16 August 2019~~ 7 September 2020



.....
Signed by Andrew Watson
Lawyer for Klemweb Nominees Pty Ltd (as trustee for the Klemweb Superannuation Trust)