



# Mine disaster makes waves in London

by Andrew Thompson

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## What happened?

The Court of Appeal in London changed its mind on 27 July and decided that it will, after all, allow an appeal on a US\$7bn lawsuit brought by 200,000 Brazilian claimants over the collapse of the Fundão dam in 2015.

## The details

This case is big for at least two reasons. First, the collapse of the tailings dam is considered Brazil's worst ever environmental disaster. Over 40mn cubic metres of mining waste swept into the Doce river, near Mariana, killing 19 victims, flattening villages, and leaving a trail of destruction all the way to the Atlantic Ocean 650kms away. Second, the case appeal, now likely to be heard next year, will be one of the largest group claims in English legal history.

Why is this happening in London? The reasons are complicated, but essentially boil down to the fact that the mine is jointly owned by Anglo Australian mining giant BHP (which has headquarters in London) and Vale, a Brazilian company. The two companies don't want a London trial. They say that there is a legal process underway in Brazil, and that they have set up a special agency there, the Renova Foundation, to manage the payment of reparations and repairs. Therefore, having a separate legal process in London is "pointless and wasteful".

However, legal firm PGMBM which represents Brazilian individuals, businesses, churches, municipalities and indigenous groups, defends a



Guardian graphic.

London trial. It says many of its claimants have not brought proceedings in Brazil, and that litigation in Brazil is so lengthy that it cannot provide full redress in a realistic timeframe. From the point of view of environmental campaigners there is also a point of principle at stake. They want to establish that big international companies can be held liable under their “home” legal jurisdictions for the conduct of their overseas subsidiaries. The implication is that they may be judged against more rigorous environmental standards and end up making larger compensation payments.

There are clearly at least two sides to the legal arguments. Last year a lower UK court rejected an appeal, saying the case should not be heard in the UK since that would represent an “abuse of process”. That view was upheld by a Court of Appeal judge in March. But at an unusual oral hearing this week, three Appeal Court judges reversed the position, saying that an appeal on behalf of the claimants had “a real prospect of success”. The appeal is likely to be heard next year. If it is upheld and there could be further appeals up to the UK Supreme Court.

## What does it mean?

There is still uncertainty over how this case will play out, but the message is that the potential legal and economic costs of environmental harm in emerging economies is increasing. There are still many tailing dams in Brazil that are considered unsafe: their owners now have increased motivation to take remedial action to prevent another disaster.

### About the Author

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As well as being a Canning House Associate Fellow, Andrew is a former foreign correspondent (Buenos Aires, Mexico City, Rio de Janeiro) and a broadcaster for the BBC’s Latin American Service. Working through La Rambla Research Ltd., he writes about economics, political risk, and business in Latin America.



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