

November 23, 2025

## Corporate oversight is not a spectator sport: *Municipio De Mariana v BHP Group (UK) Ltd & Anor [2025] EWHC 3001 (TCC)*

[\*Municipio De Mariana v BHP Group \(UK\) Ltd & Anor \[2025\] EWHC 3001 \(TCC\)\*](#)

**Date:** 14 November 2025

**Judge:** Mrs Justice O'Farrell DBE

### **Key Words:**

*Fundão Dam Collapse, BHP Group, Strict Liability, Fault-Based Liability, Brazilian Law, Polluter Pays Principle, Liquefaction, Corporate Oversight, Foreseeability, Prescription*

### **Summary**

The judgment in *Município De Mariana v BHP Group (UK) Ltd & Anor [2025] EWHC 3001 (TCC)* resolved core liability and defence issues under Brazilian law arising from the 5 November 2015 Fundão Dam collapse. The Court found BHP strictly liable under Environmental Law and at fault under the Civil Code [1113-1119].

The collapse was caused by liquefaction due to inadequate drainage, slimes encroachment, flawed design modifications (the Setback), and continued dam raising—risks which were foreseeable [1112-1116].

BHP qualified as a “polluter” due to direct/indirect responsibility and was jointly and severally liable [523-524, 882-883, 896-897, 1113-1116]. BHP was also negligent for ignoring instability indicators and raising the dam despite warnings [807, 1117-1119].

Claims were held to be in time, given suspension of prescription by ongoing criminal proceedings [1120-1121]. Municipalities were confirmed to have standing [1106-1110, 1127-1129].

### **Key Themes:**

1. **Foreseeability of Disaster:** The collapse was foreseeable; instability and liquefaction risks were identifiable from data and warnings [226-227, 330, 1112].
2. **Corporate Responsibility (Strict Liability):** BHP was a “polluter” based on control, participation, financing, and benefit from Samarco’s activity [377-380, 556, 896-897].
3. **Corporate Fault (Negligence):** BHP failed in risk management duties, ignored warnings on

*instability and drainage, and continued unsafe raising [801-803, 805-806, 807].*

4. **Prescription/Limitation:** A five-year period applied under the Consumer Defence Code, with time suspended by criminal proceedings [918-920, 936-938, 1120-1121].
5. **International Standing:** Municipalities could sue in England; doing so did not waive sovereign immunity [1106-1110, 1127-1129].

## Background

The collapse released over 40 million m<sup>3</sup> of tailings, causing 19 deaths and major damage along the River Doce [1, 4-5, 45-46]. Samarco owned/operated the dam; it was jointly owned by Vale and BHP Brasil [5]. BHP Group (UK and Limited) were the ultimate parents, operating as a unified entity under a DLC structure [5, 390-391, 401].

Over 600,000 claimants sought compensation under Brazilian law [7, 71-72, 75-77]. The First Stage Trial addressed liability and defences before quantum [9(i)-(ii), 134-135, 162-163].

## Legal Issues and Analysis

The Court analysed the following central legal issues based on Brazilian law:

### 1. Strict Liability (Environmental Law)

1. **Claimants:** BHP strictly liable under Articles 3(IV) and 14 [7(i), 250].
2. **Defendants:** Not owners/operators; no duty [8(i)-(ii)].
3. **Court:** Strict liability established [1113-1116]. "Polluter" is interpreted broadly based on control, involvement, funding, and economic benefit [380, 556, 887-897]. Causation based on equivalence of conditions; subsidiary enforcement inapplicable [359-361, 383-384].

### 2. Causation & Foreseeability

1. **Claimants:** Instability and liquefaction risks identifiable by August 2014 [92-93, 168].
2. **Defendants:** Lateral extrusion unforeseeable; prior reports showed stability [94-95].
3. **Court:** Collapse foreseeable. Liquefaction caused by lateral extrusion [90(vii)-91, 164, 1112]. Available data (seepage, CPTu/SPT) indicated contractive saturated materials [137-140, 230, 296]. A stability study would have shown insufficient FOS (<1.5) [220, 321, 329, 1112].

### 3. Fault-Based Liability (Civil Code)

1. **Claimants:** Negligence in ignoring risks and failing to act [7(ii)-(iii), 535].
2. **Defendants:** No duty; no causal link [8(i)-(ii), 538].
3. **Court:** Fault-based liability established [1115-1119]. BHP's control created a legal duty to avoid harm [801-802]. Negligent omissions included allowing saturation/slime encroachment and failing to conduct liquefaction studies [807]. Collapse was the direct/immediate result [647-649, 808-810].

### 4. Corporate Law Liability

1. **Claimants:** Liability under Articles 116/117 [7(ii)-(iii), 604].
2. **Defendants:** Duties owed only to company/shareholders [8(iii)-(v), 624-626].
3. **Court:** No liability. Duties do not extend to third parties [637-638, 1066-1068, 1079-1080, 1116-1119].

### 5. Prescription/Limitation

1. **Claimants:** Time suspended by criminal proceedings; five-year CDC period applies

[813(ii)-(vi)].

2. **Defendants:** Three-year Civil Code period applies [811-814].
3. **Court:** Claims are timely. Suspension applied until at least September 2024 [860-863]. Five-year CDC period applied to “consumers by equivalence” [936-938].

## 6. Waiver/Release

1. **Claimants:** Settlements do not bar claims [992].
2. **Defendants:** Settlements preclude claims [8(iii)-(v), 992].
3. **Court:** Civil Code governs interpretation [1125-1126]. Scope depends on agreement wording; PIM limited; Novel broader with carve-outs [1046, 1057, 1066].

## 7. Municipalities’ Standing

1. **Claimants:** Municipalities have capacity [1101].
2. **Defendants:** No capacity; would require sovereign immunity waiver [1091, 1099].
3. **Court:** Standing affirmed. Bringing compensation claims is administrative, not sovereign [1106-1110].

## Conclusion

BHP is liable under Environmental Law and the Civil Code [1113-1119]. The collapse resulted from foreseeable instability caused by design deficiencies, inadequate drainage, and failure to act on warnings, particularly around the Setback [807, 1112-1116].

Claims were timely due to prescription suspension and the applicable five-year period [861-862, 1118].

## Key Takeaway:

### 1. **Broadened Strict Liability (Environmental Law):**

*A controlling shareholder can be strictly liable as an indirect polluter under the full risk theory and polluter pays principle [250, 262-263, 285, 605-606, 610-611]. Liability is assessed via a multifactorial approach: control, participation, funding, risk oversight, approvals, and economic benefit [330, 379-380, 522-524, 530-532, 798-800], preventing the “privatisation of profits and socialisation of losses” [286].*

### 2. **Affirmed Fault-Based Liability (Civil Code):**

*BHP was independently negligent under Article 186 [535, 1113-1116] by failing to act on repeated warnings [650, 1048-1049], permitting continued raising despite inadequate drainage, slime encroachment, and missing stability/liquefaction studies [803, 805-807, 1112]. These omissions directly caused the collapse.*

## Parting Thoughts

*In a decision that reads less like a routine liability judgment and more like a masterclass in what happens when corporate control meets geological apathy, Mrs Justice O’Farrell DBE held BHP squarely—and jointly and severally—liable for the Fundão Dam collapse. The Court’s findings cut through a decade of engineering optimism, missed warnings, and slimes behaving exactly as slimes do, to reveal a simple truth: if you own, fund, influence, approve, benefit from, and generally insert yourself into an operation, you cannot later profess to be a casual bystander when the operation liquefies and travels 600km downstream.*

*BHP’s principal difficulties were (i) gravity, (ii) saturated sand, (iii) the laws of soil mechanics, and (iv) their own documents. The dam’s structural deterioration—piping, seepage, Setback improvisation,*

slimes migration, drainage degradation—was not an invisible or esoteric menace detectable only by clairvoyants or retrospective computational modelling. The warning signs amounted to a flashing neon geotechnical billboard. By late 2014, the dam was behaving with all the composure of a jelly on a trampoline. Raising it further was not bold engineering; it was optimism's final stand.

The Court dismissed any suggestion that BHP were merely passive shareholders “receiving reports from afar.” On the contrary, BHP’s influence threaded through design approvals, risk oversight, project expansion, corporate governance, and the P4P production increase that conveniently generated more tailings than the system could sensibly swallow. The result? BHP met the definition of “polluter” with impressive breadth—indeed, if the legislative intention had been to draft a bespoke definition tailored to BHP’s role, it is hard to see what would need altering. Strict liability accordingly followed, propelled by Environmental Law principles designed precisely to prevent environmental catastrophes becoming someone else’s problem.

Fault-based liability—nominally a separate route—was in practice a parallel motorway. Once BHP assumed responsibility for risk management, it also assumed responsibility for what the evidence overwhelmingly revealed: (i) the dam was showing signs of distress; (ii) stability analyses were inadequate or missing entirely; and (iii) warnings were repeatedly communicated but not meaningfully acted upon. This was not misfortune.

On limitation, BHP’s attempt to argue the claims were time-barred found itself defeated by Brazilian law’s suspension of prescription during criminal proceedings. In essence, time stood still while prosecutors in Brazil continued investigating the disaster. It is difficult to argue that claimants slept on their rights when the criminal justice system was wide awake.

Nor did the Municipalities fall at the final hurdle. Their standing was affirmed: pursuing compensation abroad is administration, not sovereignty. Attempting to characterise it otherwise was—charitably—a creative interpretation of Brazilian constitutional law.

The Court’s conclusion is at once inevitable and quietly devastating: the collapse was foreseeable; the risks were identifiable; and the Defendants, who were deeply entangled in the operation and expansion of the dam, bear strict and fault-based liability for the consequences. This judgment is not merely an application of Brazilian law; it is a reminder that corporate structures cannot be used as geological shock absorbers. When profits flow upstream and decisions are concentrated at the top, liability, too, has a habit of flowing back in the same direction—only faster.

**#ConstructionLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal #BHP #MarianaDisaster #FundaoDam #TailingsDamFailure #Brazil #CorporateLiability #StrictLiability #EnvironmentalLaw #BrazilianLaw #Liquefaction #Foreseeability #EWHC3001 #Samarco #RenovaFoundation**

## **Authorities**

### **Case Law:**

#### **Environmental Strict Liability (Articles 3(IV) & 14, Paragraph 1)**

| Cited Judgment  | Legal Point/Principle Relied On  |
|---|--|
| STJ Special Appeal No. 650.728 (2007) (Mangroves)     | Established a broad concept of polluter for Article 3, IV, using a multifactorial approach; equated liability for those who do, those who let them do, those who finance, and those who benefit.                                     |
| STJ Special Appeal No. 1.071.741 (2009) (Jacupiranga) | Restated the broad polluter concept; confirmed environmental civil liability is strict, joint, several, and unlimited; held that non-differentiation between main and secondary causes precludes exemption for minimal contribution. |

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| STJ Special Appeal 1.374.284 (2014) (Cataguases Repetitive Theme 707) | Established that the principle of strict liability under Environmental Law is based on the full risk theory, making the exploiter of a risky activity accountable for all resulting damage, regardless of fault.  |
| STJ Special Appeal No. 1.612.887 (2020) (Esso)                        | Confirmed environmental liability is governed by the full risk theory and the polluter pays principle, justified by the "redistributive vocation" of Environmental Law (avoiding the "privatisation of profits and socialisation of losses"); precludes traditional civil liability exclusions. |
| STJ Special Appeal No. 1.816.808 (2019) (Gold)                        | Expressly disavowed the application of Article 403 of the Civil Code (direct and immediate causation) in environmental damage cases because the liability is unlimited and based on the full risk theory.   |
| STJ Special Appeal No. 1.747.622 (2018) (Paraíba do Sul River)        | Confirmed joint and several liability for all who directly or indirectly caused environmental degradation; held that parties cannot exempt themselves by claiming they did not personally and directly contribute to the damage.  |
| STJ Special Appeal No. 67.285 (2004) (Cubatao)                        | Found that exploitation of a risky activity is sufficient to attract strict, joint, and several liability under Environmental Law, even if damage results from outsourced activities.   |
| STJ Special Appeal No. 1.346.430 (2012) (Olapa)                       | Held that the polluter exploits a risk activity, placing itself in the position of guarantor of environmental preservation; precludes invoking civil liability exclusions; reaffirmed activity as a contributory cause is sufficient.   |
| STJ Special Appeal No. 1.373.788 (2014) (Bioenergia)                  | Confirmed strict liability based on the integral risk theory; rejected the act of a trespasser as breaking the chain of causation; supported that all who create the risk must bear the charges ( <i>ubi emolumentum, ibi onus</i> ).   |
| STJ Special Appeal No. 467.212 (2003) (Liberian Ship Case)            | Cited for establishing that civil liability for environmental damage is strict and independent of fault or intent.  |
| STJ Special Appeal No. 578.797 (2004) (Krupp)                         | Cited for confirming that civil liability for environmental damage is strict.   |
| STJ Special Appeal No. 2.065.347 (2024) (Capibaribe)                  | Defined environmental civil liability as a "very special" legal regime, governed by principles such as "polluter pays" and "full redress," based on the full risk theory.   |

### **Prescription - Suspension by Criminal Proceedings (Article 200 Civil Code) and Consumer Protection**

| Cited Judgment  | Legal Point/Principle Relied On   |
|---|---|
| STF Extraordinary Appeal 654833/AC (2020) (Theme 999)       | Established the binding thesis that the right to claim civil redress for environmental damage is not subject to prescription (non-prescription); limited this principle to public environmental claims (restoration relief), not private compensation claims. |
| STJ Special Appeal No. 2.009.210 (2022) (JBS Poultry 8)     | Held that victims of individual damage resulting from a polluting business activity (manufacturer) can be characterized as a "consumer by equivalence" (Article 17 Consumer Defence Code), attracting the application of CDC provisions.                      |
| STJ Special Appeal No. 2.018.386 (2023) (Pedra do Cavalo 4) | Confirmed that consumer accident characterisation applies if damage results from the production process itself; adopted a broad interpretation of "consumer by equivalence" in environmental damage cases.  |
| STJ Special Appeal 1.631.870 (2017) (Jolivan)               | Established that Article 200 aims to protect victims by suspending prescription when the unlawful act is also a criminal offence, and the exercise of civil rights depends on the criminal sphere determining the context and authorship of the unlawful act. |
| STJ Special Appeal 1.393.699 (2013) (Umuarama Diocese)      | Applied Article 200; held that prescription does not run while the event giving rise to civil compensation is discussed in the criminal sphere, and that the text of the law does not require the civil case to necessarily depend on criminal verification.  |

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| STJ Special Appeal 1.704.525 (2017) (Pentecostal Mission)              | Applied Article 200; established that the existence of an ongoing criminal action or police investigation is sufficient to suspend prescription, and this suspension can extend to claims involving joint and several liability between the author of the offense and a third-party defendant. |
| STJ, Internal Special Appeal 1.311.109 (2019) (Medical negligence STJ) | Confirmed that prescription under Article 200 runs from the date of the final and unappealable criminal sentence, even if the defendant is acquitted.  |
| STJ Internal Special Appeal No. 2.138.785 (2023) (JBS Poultry)         | Confirmed the settled position that the Consumer Defence Code applies to environmental damage suffered by those not in the consumption chain, defining them as "consumers by equivalence" or "bystanders".   |
| STJ Internal Special Appeal No. 2.096.090 (2022) (State of RN)         | Applied Article 200 even where the state was strictly liable, reinforcing that the criminal action prevents prescription from running until res judicata.  |
| STJ Special Appeal No. 1.131.125 (2011) (Salineira)                    | Did not apply Article 200 because an ongoing police inquiry into a fatal accident was not a 'prejudicial issue' for the civil compensation claim.  |

### **Fault-Based Liability (Article 186 Civil Code) and Causation**

| Cited Judgment  | Legal Point/Principle Relied On  |
|---|--|
| STJ Special Appeal 1.698.726 (2021) (Negligent Birth case)  | In omissions cases, causation should be assessed normatively based on the agent's legal duty to avoid the result; the duty to act can arise because the agent itself has created or aggravated the risk of the damaging result.                        |
| STJ Special Appeal 1.860.324 (2021) (Wire Fence case)       | Found liability based on the defendant's creation of a risk (altering the road path), giving rise to a legal duty to provide a warning sign, despite the lack of a specific written legal duty.  |
| STJ Special Appeal 1.307.032 (2013) (Hospital Escape Case)  | Reporting Justice suggested civil liability for omission could arise "whether or not derived from a pre-existing legal duty"; cited by experts as supporting the application of the adequate causality/direct and immediate damage test for causation. |
| STJ Special Appeal 1.718.564 (2020) (Demarco case)          | Confirmed the theory of direct and immediate damage (Article 403 Civil Code) is adopted in Brazilian civil liability (not <i>sine qua non</i> ); defined direct/immediate as the most determining cause.   |
| STJ Special Appeal 790.643 (2016) (Parkshopping Case)       | Applied adequate causation (Article 403) in a non-contractual context, holding that the defendant's conduct must be "decisive" in the occurrence of damage.  |
| STJ Special Appeal 2.108.182 (2024) (Rally case)            | Held liability based on omissive and negligent behaviour arising from the assumption of responsibility (by having medical staff available) to assist competitors in foreseeable accidents.   |
| STJ Special Appeal 1.113.804 (2010) (Tobacco Case)          | Addressed that the legal duty required for liability (unlawfulness) is not limited to written law, but can derive from the legal system's principles (such as good faith) or customs.  |
| STJ Special Appeal 1.615.971 (2016) (Brazuca Recourse Case) | Held that civil liability (strict or fault-based) requires a causal link assessed on the basis of adequate causality (Article 403 Civil Code); recognized concurrent liability and the possibility of proportional apportionment.                      |

### **Corporate Law Liability (Articles 116 & 117 Corporate Law)**

| Cited Judgment                                | Legal Point/Principle Relied On  |
|---|--|
| STJ Special Appeal 633.338 (2006) (Brasal)    | Established that liability under Articles 116 and 117 is subject to Article 246 of the Corporate Law, meaning the action is filed by the controlled company (or its shareholders) and damages reflect directly on the company, not creating an autonomous duty to third parties. |
| STF Extraordinary Appeal 113.446 (1988) (DIG) | Defined abuse of power as the illegitimate exercise of power, used to harm a category of shareholders or to satisfy exclusively personal interests.  |
| STJ Special Appeal 1.636.561 (2018) (Ordene)  | Required proof of damage to the company/shareholders for abuse of power liability, but not proof of the controlling shareholder's subjective intention to cause harm.  |

## Ancillary Prescription Rules (Limitation Period & Accrual)

| Cited Judgment  | Legal Point/Principle Relied On   |
|---|---|
| STJ Special Appeal No. 1.596.081 & 1.602.106 (2017) (Vicuña)                  | Although primarily an environmental liability case, it confirmed that the application of the full risk theory does not dispense with the need to demonstrate a causal link between the damaging effects claimed and the acts or omissions of the party alleged to have caused them. |
| STJ Special Appeal No. 1.236.863 (2011) (Malathion)                           | Applied the <i>actio nata</i> principle; held that the right of action accrued, not when the harmful act occurred, but when the injury manifested itself (emergence of pathologies).  |
| STJ Special Appeal No. 1.641.167 (2018) (AES Triunfo 6)                       | Established an exception to the general rule, confirming that the prescription period starts from the date of effective awareness or unequivocal knowledge of the individual environmental damage suffered.   |
| STJ Special Appeal No. 1.659.500 (2017) (Abandoned Property)                  | Held that misuse of neighbouring land constituted continuous ongoing damage, renewing the prescription period each day (periodic violation).  |
| STJ Special Appeal No. 1.081.257 (2018) (Riverbank Ranch)                     | Held that the maintenance of buildings in a preservation area was an ongoing violation, meaning the damage was perpetuated and the legal claim renewed daily.   |
| STJ Internal Special Appeal No. 1.236.866 (2011) (State of Rio Grande do Sul) | Cited for the principle of isonomy, applying the five-year prescription period (1932 Decree) to claims by municipalities and state entities (not just claims against them).   |
| STJ Special Appeal No. 291.157 (2001) (Asbestos)                              | Held that in a personal injury claim caused by occupational exposure, time did not begin to run until the employee had knowledge of his incapacity.   |

## Procedural/Ancillary Judicial Principles (Including Foreign Law and Standing)

| Cited Judgment  | Legal Point/Principle Relied On   |
|---|---|
| PC 1 WLR 3494 (Perry v Lopag Trust Reg)                                     | Summarised the principles for assessing foreign law evidence, noting the judge must determine what the highest relevant foreign court would decide and evaluate the experts' reasoning based on all the evidence.   |
| STJ Special Appeal No. 2039216-80.2013.8.26.0000 (2014) (TAG)               | Upheld that controlling company status linked to the highest beneficiary (Petrobras) gave rise to standing as a defendant in claims relating to the subsidiary's activity.  |
| STJ Restatement of Precedent 652 (2022)                                     | Clarified that the joint and several civil liability of the State (public administration) for environmental damage arising from omission of its duty to supervise is enforceable only on a subsidiary basis.  |
| STJ Special Appeal No. 647.493 (2007) (Coal Case)                           | Addressed liability of shareholders/managing partners for companies' debts; found managing partners liable by way of secondary liability pursuant to Civil Code provisions (Articles 942 and 1024), distinguishing this from subsidiary enforcement for indirect polluters. |
| EWHC 273 (QB) (Pandya v Intersalonika General Insurance Co SA )             | Held that foreign legal requirements governing the method of interrupting a limitation period fall under substantive law (Rome II Article 15(h)), not procedural law (Article 1(3)).  |
| TJSP Civil Appeal 0194012-30.2008.8.26.0100 (2013) (Latina Derailment Case) | Dismissed preliminary argument that a controlling shareholder of a concessionaire company lacked standing, confirming that a shareholder is not exonerated from potential civil liability by status alone.  |
| STJ Special Appeal No. 1.988.894 (2023) (Mapfre)                            | Cited for defining an adhesion contract by the criteria of unilateral drafting and the absence of pre-negotiation by the adherent party.  |

## Legislation:

## Environmental Strict Liability and Fundamental Rights

| Statute / Regulation  | Legal Point/Principle Relied On  |
|---|--|
| Law 6.938/1981 (the Environmental Law)                                | Provides a special legal regime for civil liability in environmental claims based on the full risk theory, establishing that liability is strict, joint, several, and unlimited, and governed by principles such as the polluter pays and full redress.                                |
| Environmental Law, Article 14, paragraph 1                            | Imposes strict liability on the polluter, regardless of fault, to indemnify or repair damage caused to the environment and third parties affected by its activity (the principle of full redress).   |
| Environmental Law, Article 3, IV                                      | Defines a "polluter" as a natural or legal person who is directly or indirectly responsible for the activity that causes environmental degradation.  |
| Constitution of the Federative Republic of Brazil (the Constitution)  | Has hierarchical superiority over other written laws; contains fundamental environmental rights. The relevant provision is Article 225, guaranteeing the right to an ecologically balanced environment, and obliging exploiters of mineral resources to restore degraded environments. |
| Environmental Law, Article 3, II                                      | Defines "Degradation of the quality of the environment" as the adverse alteration of the characteristics of the environment.   |
| Environmental Law, Article 3, III                                     | Defines "Pollution" as the degradation of the environmental Quality resulting from activities that directly or indirectly cause harm.  |
| DN COPAM Normative Resolution 62/2002, Article 7 (and Sole paragraph) | Stipulates that owners of the enterprise are responsible for safety procedures in dam implementation/operation/closure, and regulatory activities do not exempt owners of full responsibility for dam safety.  |

### Prescription and Civil Liability Causation

| Statute / Regulation                    | Legal Point/Principle Relied On   |
|---|---|
| Law 10.406/2002 (the Civil Code)        | General law that applies where special law (like Environmental Law) is silent and non-conflicting. Governs general contractual principles .   |
| Civil Code, Article 200                 | Suspends the prescription period for a civil action when the fact originates from a matter that must be ascertained in the criminal court, until the respective final judgment.                               |
| Civil Code, Article 186                 | Defines an illicit act: anyone who, by voluntary act or omission, negligence or imprudence, violates a right and causes damage to another. The basis for fault-based liability.                               |
| Civil Code, Article 403                 | Mandates that losses and damages only include effective losses and lost profit that are the direct and immediate effect of non-performance (used as the applicable test for civil fault liability causation). |
| Civil Code, Article 927                 | States that anyone who causes harm through an illicit act (Articles 186 and 187) is obliged to repair it.   |
| Civil Code, Article 206, Paragraph 3(V) | Provides that the prescription period in respect of the right to claim for civil redress is three years (subject to shorter periods).   |
| Civil Code, Article 927, sole paragraph | Provides for an alternative strict liability regime where the activity developed involves risk to the rights of others, applying only where a special regime (Environmental Law) does not apply.              |

### Consumer Protection and Public Entity Prescription

| Statute / Regulation                             | Legal Point/Principle Relied On   |
|--|---|
| Law 8.078/1990 (the Consumer Defence Code - CDC) | Special law intended for consumer protection and defence of public order/social interest. The Court applies it to determine the prescription period for environmental damage victims. |
| Consumer Defence Code, Article 27                | Provides a five-year prescription period for the right to claim redress for damages caused by a product or service fact .   |
| Consumer Defence Code, Article 17                | Deems all victims of the event (a consumer accident) to be consumers ("consumers by equivalence") for the purpose of Section II (liability for product/service defects).              |

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|--|---|
| Decree 20.910/1932 (the "1932 Decree") | Sets a five-year limitation period for Federal, State, and Municipal debts, as well as any right or action against the Federal, State or Municipal Treasury. This period is applied by the STJ to claims by municipalities based on the principle of isonomy. |
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## Corporate and Governmental Structure Legislation

| Statute / Regulation                   | Legal Point/Principle Relied On  |
|--|--|
| Law 6.404/1976 (the Corporate Law)     | Special law defining the creation and operation of corporate entities.   |
| Corporate Law, Articles 116 and/or 117 | Establish the duties and potential liability (for abuse of power) of a controlling shareholder, but these duties are limited to the controlled company and its shareholders, and do not create autonomous duties to third parties (such as the community). |
| Corporate Law, Article 246             | Obligates a controlling company to compensate a controlled company for damage caused by infringing Articles 116 and 117.   |
| Civil Code, Article 41(III)            | Designates Municipalities as legal entities governed by public law.  |
| Constitution, Article 21(I)            | Grants exclusive competence to the Federal Government to maintain relations with foreign states and participate in international organizations.  |
| Constitution, Article 84 (VII)         | Grants exclusive constitutional powers to the President of Brazil to represent Brazil in relations with other countries.   |

## Legal Texts & Commentary:

### Environmental Strict Liability and the Full Risk Theory

| Cited Legal Text / Commentary   | Legal Point/Principle Relied On  |
|---|--|
| BENJAMIN, Herman. Responsabilidade Civil pelo Dano Ambiental. 14.3. The full risk in: Responsabilidade civil [Civil Liability], v.7 - Environmental law/ Nelson Nery Junior, Rosa Maria de Andrade Nery organizers. -- São Paulo: Editora Revista dos Tribunais, 2010. page 501/501 | Under the full risk theory governing environmental civil liability, the traditional exculpatory defenses such as vicarious liability, fault of the victim, act of God, or force majeure are not accepted. Civil liability stems directly from the polluter developing a risky activity from which damage occurred, separating any analysis of the subjectivity of the agent's conduct. |
| Steigleder, Annelise Monteiro   | Teaches that environmental liability is strict, informed by the Full Risk Theory; the causal link allows the risk to be integrated into the unit of an act, and the one who exploits the economic activity places itself in the position of guarantor of environmental preservation, precluding the invocation of civil liability exclusions.  |
| MILARÉ, Édis; MACHADO, Paulo Affonso Leme (Organizer). Doutrinas Essenciais de Direito Ambiental: responsabilidade em matéria ambiental. São Paulo: Revista dos Tribunais, vol. v, 2011, pages 43-48  | Cited for defending the understanding that the adoption of the Full Risk Theory in environmental liability is justified by the scope of protection granted by Article 225 of the Federal Constitution.   |
| Pereira, Caio Mário da Silva  | Jurist who stated that not every omission leads to civil liability; relied upon for the idea that, in the context of liability arising from an activity, it suffices to assess whether there was damage bound to any fact to assure compensation.  |
| Lucarelli   | Cited for arguing that the obligation to pay compensation arises from the fact that there is the activity from which the loss arises, though a causal link between the activity and the loss is still needed.  |

Iturraspe, Jorge Mosset. *Responsabilidad por Daños [Liability for Damage]*, Part VI, *Responsabilidad Colectiva [Collective Liability]*, Rubinzel-Culzoni, Buenos Aires, 1999, page 161

Supports that if there are several polluters, the defendant cannot exempt themselves by claiming they were not the only polluter or that it is impossible to identify the one who triggered the damage.

### Fault-Based Civil Liability (Article 186) and Causation

| Cited Legal Text / Commentary  | Legal Point/Principle Relied On   |
|--|---|
| CAVALIERI FILHO, Sergio. <i>Programa de responsabilidade civil</i> . São Paulo: Atlas, 2015, pages 69-73   | Reflects that the arrival of strict liability requires double attention when analysing the causal link, the interruption of which is the only way of excluding the duty to indemnify; the decision on liability in strict liability cases often turns into the decision on the existence of a causal link between the fact and the damage. His legal scholarship was cited to support civil liability for omission being analogous to liability under the Penal Code arising out of an assumption of responsibility and creation of risk. |
| MELO, Nehemias Domingos de. <i>Da culpa e do risco como fundamentos da responsabilidade civil. [Fault and risk as principles of civil liability]</i> São Paulo: Atlas, 2012, pages 29-30 | Argues that the theory (strict liability based on risk) induces those who develop potentially dangerous activities to ensure the activity will not cause harm to others; the obligation to redress damage arises from the mere exercise of an activity which, if it causes damage to third parties, will cause the party who holds control of the activity the duty to indemnify.   |
| Novaes, Domingos Riomar  | Quoted in the Negligent Birth case in relation to the broader test for legal duty.  |
| Schreiber, Anderson  | Cited for reflecting on the requirement for double attention when analysing the causal link in strict liability actions.  |

### Corporate Law (Articles 116 & 117)

| Cited Legal Text / Commentary   | Legal Point/Principle Relied On   |
|---|---|
| Carvalhosa, Modesto   | Teaching relied upon in Brasal STJ Special Appeal 633.338, confirming that the imputation of responsibility for violating Articles 116 and 117 is subject to Article 246 of the Corporate Law, meaning the effect of granting relief is reflected directly on the controlled company. |
| Coelho, Fabio Ulhoa. Civil Law Course                                   | Legal jurist relied upon by Professor Dantas to describe a regime of legal inequality where public interests must prevail over individual interests, granting prerogatives to public law entities not granted to private law entities.  |
| Tiburcio, Professor Carmen and Professor Barroso (President of the STF) | Academic writing relied upon by Professor Tepedino that if an entity is not the holder of sovereign immunity, it cannot waive it.   |

### Dam Engineering and Geotechnical Commentary

| Cited Legal Text / Commentary  | Legal Point/Principle Relied On   |
|--|---|
| ICOLD Bulletin No. 97 (1994), Chapter 3  | States that the grain size distribution and lack of cohesion of tailings make them susceptible to liquefaction under dynamic loading or rapid change in static loading/phreatic line. Chapter 7.4 warns of the dangers of unfavourable material zoning and formation of slime layers.   |
| Martin and McRoberts, "Some Considerations in the Stability Analysis of Upstream Tailings Dams" (1999) | Identified mechanisms/processes understood as potential triggering mechanisms for liquefaction. States that there is nothing fundamentally wrong with upstream tailings dams provided that key principles are adhered to in design, construction, and operation. Identifies fundamental design rules, including that design analyses must include both Undrained Strength Analysis (USA) and Effective Stress Analysis (ESA), controlled by the one giving the lowest factor of safety. |

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| ICOLD Bulletin No. 74 (1989), Chapter 6  | Provides guidance that tailings should be discharged to maintain a uniform minimum beach width, suggesting approximately 100m if possible.   |
| ICOLD Bulletin 121   | Summarises that the art and science of geotechnical engineering provides designers sufficient information to enable the design of safe tailings dams.  |
| ICOLD Bulletin 139   | Guidance referred to by Dr Marr, suggesting an engineer must be completely confident of a non-saturated condition before using drained strength for stability calculations.  |
| Australian National Committee on Large Dams ("ANCOLD"), "Guidelines on Tailings Dams" (May 2012) | Advises that a drained loading condition should be used only if there is high confidence in the saturated condition; recommends Factors of Safety, including 1.5 for undrained peak strength in USA and 1.0-1.2 for liquefied residual shear strength. |

### **Ancillary Prescription and Consumer Law Concepts**

| Cited Legal Text / Commentary   | Legal Point/Principle Relied On   |
|---|---|
| MILARÉ, Professor   | Cited for a work of jurisprudence explaining the difference between damage to the macrobem (diffuse environmental damage) and damage to the microbem (individual/personal damage) resulting from environmental pollution. |
| Federal Justice Council ("the CJF") Agreed Statement 33   | Used the term "multifactorial causal chain (factual and normative)" in the context of the "broad concept of polluter" encompassing direct and indirect polluters pursuant to Article 3, IV.                               |
| CAVALIERI FILHO, Sergio. Programa de responsabilidade civil. 13. Extended and reviewed edition São Paulo: Atlas, 2019, p. 603 | Supported the Consumer Defence Code's adoption of the theory of enterprise risk, where anyone willing to carry out an activity in the consumer market must answer for flaws or defects regardless of fault.               |
| Pontes de Miranda   | Jurist cited for the position that no liability arises for mere failure to act in respect of a moral duty.  |
| Santos, J.M de Carvalho   | Jurist cited for the position that there is no general obligation to avoid damage to others; only an obligation not to cause harm.  |

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CIarb Arbitration Panel Member since 2006

CIC Adjudication Panel Member since 2010

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

TECSA Adjudication Panel Member since 2012

FIDIC Adjudication Panel Member since 2021

ICE Adjudication Panel Member since 2021

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