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## Lawyer behind \$3.6b Samarco class action wants to avoid taxpayer clean-up bill



A farmhouse is buried in mud in Bento Rodrigues valley after BHP-Vale's Samarco dam failure. Steve Yolen

by [Steve Yollen](#)

The Brazilian tax lawyer who filed a R\$10 billion (\$3.6 billion) class action suit in Minas Gerais state court against the BHP Billiton-owned Samarco Mineracao says his lawsuit is meant to ensure taxpayers do not bear the sole responsibility of paying for damages caused by its recent catastrophic dam failure.

Pedro Eduardo Pinheiro Silva, principal of the Pinheiro Silva Advogados Associados law firm in Vitoria da Conquista, Bahia state, told *The Australian Financial Review* the suit was aimed only at Samarco, rather than BHP and Brazilian mining giant Vale, which jointly own the mine.

"It was filed against Samarco. In our view there is no legal reason to serve as the basis of filing of a lawsuit against BHP and Vale."

However, it is likely BHP will incur some of the costs of any suit. BHP chairman Jac Nasser said at the company's annual meeting on Thursday the company was "100 per cent committed to do everything we can to support Samarco and make this right".

Samarco's tailings dam failure on November 5 caused a wall of mud and mining waste

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to smash into a small town of 650 people and is affecting more than a dozen riverside towns and cities on its way to the Atlantic Ocean 500 kilometres downstream, which it was expected to reach by Friday.

Eleven people are confirmed dead and eight are still missing in the wake of the catastrophe, considered the worst mining tailings dam disaster ever because of the scope of the environmental damage being caused on the giant mudslide's messy journey to the sea.

Clean-up and reparation damages were estimated on Monday by a Brazilian lawmaker investigating the disaster at between \$US2.5 billion and \$US3.6 billion (\$3.52 billion and \$5.06 billion).

## RAISE THE FINANCIAL STAKES

The class action lawsuit filed by Silva could raise the financial stakes for Samarco and its owners even further, although the lawyer said he did not want the Brazilian mining company to ultimately fail.

"We believe that responsibility should be imputed to the company, but preserving it without harming its activities and, hence, the jobs and funds generated on behalf of the country. This, incidentally, seems to be the feeling of the populations involved," Mr Silva said.

"The extent of the environmental damage and the collective non-material moral damages involved has led to the need for filing the civil suit, so that the courts can determine the compensation due to the Brazilian society, either because of ecological damage or the suffering caused to thousands of affected people."

Mr Silva said the suit had been filed on behalf of a small local non-government organisation, Defesa de Interesses Coletivos por Associacao (DICA), and it could be joined by other similar organisations that represent civil interests in the region.

The suit did not request compensation be paid to the DICA, he said. Any indemnities received would go into a federal reparations fund.

The difference between his class action suit and one being filed by the federal environmental agency IBAMA, he said, was that his was for civil non-material damages, whereas IBAMA was seeking punitive damages for the clean-up of the

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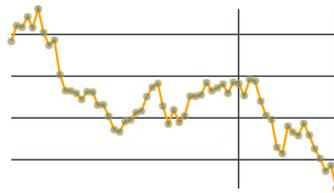
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"Besides being necessary, the law does not require there be a waiting period any time after the occurrence of the damage before a civil suit can be filed," Mr Silva said.

## AMOUNT OF COMPENSATION

The eventual amount of compensation "should be the subject of a technical study by experts, to be conducted during the discovery phase of the civil suit", he said.

The lawsuit was also designed to require Samarco "to conduct an environmental recovery plan that will be determined by the government authorities", he said.

This amount would be included in the R\$10 billion value of the case.

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