

TRAFIGURA

PROBO KOALA FACTSHEET

Chronology and Key Details

Agreed Final Joint Statement between Trafigura and Leigh Day & Co

- The parties have since August 2006 expended considerable time and money investigating in detail the events in Abidjan in 2006. As part of that process, in excess of 20 independent experts in shipping, chemistry, modelling, toxicology, tropical medicine, veterinary science and psychiatry have been appointed to consider all the issues relating to those events.
- These independent experts are unable to identify a link between exposure to the chemicals released from the slops and deaths, miscarriages, still births, birth defects, loss of visual acuity or other serious and chronic injuries. Leigh Day & Co, in the light of the expert evidence, now acknowledge that the slops could at worst have caused a range of short term low level flu like symptoms and anxiety.
- From these investigations, it is also clear that there are many claims which have been made for symptoms, in some cases perhaps understandably, which are unconnected with any exposure to the slops.
- In the light of the expert evidence, Leigh Day & Co withdraws the comments made on its website on 8 November 2006 and subsequently, which alleged, among other things, that the slops had caused a number of deaths and miscarriages. Trafigura and Leigh Day & Co have accordingly resolved the libel proceedings brought by Trafigura.
- Leigh Day & Co deny that any of their clients have made any deliberately false claims. In the light of assurances given to their senior leading counsel and in view of his advice, Leigh Day withdraw any allegation that there has been impropriety on the part of Trafigura or any of its legal advisors, (including Macfarlanes) in investigating the claims.
- Leigh Day & Co acknowledge the substantial assistance that Trafigura provided to the Government and people of the Cote d'Ivoire, including the provision of medical supplies and payments for de-contamination of dumpsites and the establishment of a compensation fund.
- It remains Trafigura's position that it did not foresee, and could not have foreseen, the reprehensible acts of Compagnie Tommy in dumping the slops in and around Abidjan in August and September 2006, and that Compagnie Tommy acted entirely independently of, and without any authority from, Trafigura. Nevertheless, Trafigura regrets that this incident occurred and is pleased that the matter has now been resolved.

July 2006

The Probo Koala was chartered by Trafigura to undertake commercial loading and discharging of cargoes of gasoline and gasoline blendstock, including naphtha and coker naphtha, at various ports.

On 2 July, the Probo Koala, en route to Paldiski, Estonia, called at the port of Amsterdam to discharge slops, comprising a mixture of gasoline, water and spent caustic soda with a small amount of catalyst. The slops were generated by commercial ship operations carried out to caustic "wash" and oxidise coker naphtha cargoes on board the vessel.

Before arriving in Amsterdam, a fee had been agreed with a slops removal company, Amsterdam Port Services BV (APS). However, during the discharge of the slops, APS increased its price by 3,000% without providing any credible justification. Discussions then took place between APS and the Amsterdam environmental authorities, before Trafigura was given the green light to re-load the slops onto the Probo Koala. On 5 July, the vessel departed with the full knowledge and clear approval of the Dutch authorities.

August 2006

After picking up a gasoline cargo in Paldiski, the Probo Koala delivered it to Lagos, Nigeria. In Lagos, attempts were made to find a suitable operator who could offload the slops. However, this search proved unsuccessful, so during its return voyage the Probo Koala called at Abidjan, Ivory Coast to discharge its slops. Abidjan was selected for this task because it is one of the largest and most sophisticated ports in West Africa, used regularly each year by Trafigura and other oil traders as well as the oil majors.

On 19 August, the Probo Koala arrived in Abidjan. Beforehand, an experienced shipping agent in Abidjan nominated Compagnie Tommy to receive the Probo Koala's slops. Compagnie Tommy was fully licenced by the Ivorian government and authorised by the port to do this work. Trafigura checked the credentials provided and made an independent check with the port authorities. Proper procedures were followed as the slops were removed from the ship, with the written approval of the port authorities and in the presence of the police and customs officials.

Reprehensibly and illegally, Compagnie Tommy subsequently proceeded to dump the slops in and around Abidjan. Trafigura could not have foreseen these disgraceful actions, which were in flagrant breach of Tommy's licence and its undertakings to Trafigura. Very shortly after the dumping by Tommy, the Ivorian State commenced civil legal proceedings against Trafigura which included a claim for an immediate initial down payment of \$500m and Trafigura also commenced its own legal proceedings against various parties in Abidjan.

September 2006

As concern grew in the Ivory Coast following Compagnie Tommy's illegal slops dumping, two senior Trafigura directors arrived in the country on 14 September with a team of experts to offer technical and financial assistance. Both directors, together with the manager of Trafigura's local subsidiary, were subsequently arrested on 18 September by the Ivorian authorities and imprisoned without trial for five months before finally being released.

November 2006

On 7 November, an English High Court action was initiated by an English law firm, Leigh Day & Co, which (on a no-win, no-fee basis) took on compensation claims from Ivorians claiming they suffered serious injuries from the dumped slops. Trafigura maintained its position that the slops could not have caused the alleged deaths and serious injuries.

February 2007

On 14 February, an agreement was reached between Trafigura and the Ivorian state in which both parties agreed to terminate all ongoing civil legal action in the Ivory Coast. The agreement also included a promise by the Ivorian state to indemnify any individual claiming to have suffered harm. As a contribution towards the compensation for these individuals and for improving the environment in Abidjan – including assistance towards the construction of a domestic waste disposal plant – Trafigura made a payment of €152 million to the Ivory Coast Government.

The payment did not involve any admission of liability. Rather, underlying the settlement was the opinion that, although Trafigura did not have any legal liability for the Probo Koala 'incident', as a major trading company in West Africa the company believes it has an economic responsibility to this region.

The agreement also stipulated that independent environmental audits were carried out. As a result of the audits' findings, it was agreed by all parties that only a limited amount of additional remedial work was required to address odour concerns. Investigations demonstrated that, on the basis of European environmental standards, no further intervention works would be required given the low levels of contamination found.

Following a final endorsement in April 2008, the Ivorian State confirmed it was completely satisfied that Trafigura had complied with all of its obligations under the February 2007 Agreement.

March 2008

On 19 March, the Ivorian Court of Appeal ruled that, due to a lack of any evidence of any offences committed by them, no criminal charges would be pursued against Trafigura employees or those of its subsidiaries.

June 2008

On 27 June, the Dutch Public Prosecutor decided to bring charges against Trafigura, its Chairman and one of its employees, together with Amsterdam Port Services, a Director of APS, the City of Amsterdam and the Probo Koala's Master (Captain). These charges are highly technical and only relate to events that took place in Amsterdam during July 2006.

(The Amsterdam Court subsequently dismissed the case against Trafigura's Chairman, although a final appeal remains outstanding.)

In relation to all the charges, Trafigura and its employee categorically deny any wrongdoing and will vigorously defend themselves. The trial is due to commence in June 2010.

September 2009

Professor Okechukwu Ibeanu, a Special Rapporteur for the UN's Human Rights Council, published a highly inaccurate and poorly researched report concerning the dumping of the Probo Koala's slops (and their alleged effects on the local population) that was entirely unsupported by verifiable evidence. Trafigura had, on numerous occasions, offered Professor Ibeanu assistance and access to information to ensure an accurate and balanced report. For example, in 2009, Trafigura appointed WSP Environment and Energy to undertake independent environmental investigations in and around Abidjan. The results of this work did not identify any compounds specifically related to the slops at the tested sites and therefore WSP concluded that there was no related risk to human health caused by the slops at these sites.

Trafigura's legal position in the UK was ultimately vindicated when the group action was settled on 23 September, following a comprehensive review of the incident in Abidjan by more than 20 independent expert witnesses. In a Joint Statement issued by Leigh Day & Co (on behalf of 30,000 Claimants) and Trafigura, it was confirmed that the independent experts were unable to identify any link between exposure to the chemicals released from the slops and deaths, miscarriages or other serious or chronic injuries. (The Joint Statement's wording is included within this document.) As a result of this expert evidence, Leigh Day & Co acknowledged that the slops could at worst have caused a range of short-term, low level flu-like symptoms and anxiety. The settlement was reached without any admission of liability by Trafigura.

At a court hearing on 23 September, Mr Justice MacDuff (who had been due to hear the trial of the case) endorsed the settlement and commented that: "from where I sit and from what I have seen of the [Court] papers, the Joint Statement is 100% truthful."

The judge went on to say that: "I have been following what has been happening in the media both in the newspapers and on TV and radio. I have witnessed myself how wildly inaccurate some of the statements have been. It can all be put right with the final Joint Statement. Speaking for myself, I hope the press that have made statements which have been wrong will take note of the Joint Statement."

October 2009

On 16 October 2009, a Court injunction which Trafigura obtained to prevent the publication of a legally privileged and confidential document was lifted.

In September 2006, Trafigura had commissioned chemists Minton, Treharne & Davies Ltd to prepare a report, based on purely hypothetical ideas as to what may have happened when the Probo Koala's slops were illegally dumped by Compagnie Tommy. Minton produced an initial draft desktop report which was never finalised, as its contents were quickly and authoritatively superseded by analyses of the actual slops, prepared by the Netherlands Forensic Institute. Of note, the NFI's analyses clearly show that, due to the high alkalinity of the slops, hydrogen sulphide in its molecular form would not have been present in the slops. The NFI's analyses were subsequently relied upon by Trafigura, Leigh Day & Co and the expert witnesses during their preparations for the UK group action.

Subsequently, the draft Minton report was unlawfully obtained and leaked to the media, apparently to undermine the company's (now accepted) assertion that the slops did not cause the alleged deaths or serious injuries. On learning of this leak, Trafigura obtained an injunction against the publication of the draft report. Following further media speculation about the draft Minton report (including the leaking of the report onto various websites overseas), Trafigura decided that there was little purpose in continuing the injunction. At the same time, Minton issued a press statement confirming that its September 2006 report was a preliminary draft and had been completely superseded.

Contrary to some press speculation, Trafigura never had any intention of suppressing media reporting of UK parliamentary questions related to the draft Minton report.

December 2009

On 17 December, the BBC apologised in Court to Trafigura, over false allegations made in May 2009 on its flagship Newsnight programme and in a related website article that the Probo Koala's slops caused deaths, miscarriages and other serious injuries. The BBC broadcast a further apology during that evening's edition of Newsnight. The BBC explicitly accepted that, having reconsidered the position in detail, it had simply got the allegations wrong and withdrew them in full. As well as apologising, the BBC agreed to pay £25,000 in damages (which Trafigura donated to charity), in addition to Trafigura's legal costs.

Key facts

- Trafigura sought to act at all times in compliance with local and international regulations.
- Gasoline washing is a common and legal process that reduces mercaptan levels in gasoline cargoes in order to meet specific contractual obligations.
- Mercaptans naturally occur within oil products and elsewhere, (e.g. from decomposition of vegetation and from human digestion) and are very smelly. Mercaptans are injected into domestic supplies of natural gas (which has no odour of its own) to alert users to the presence of gas, and there is also a common application as a food additive for garlic flavour.
- Ship generated waste, such as the Probo Koala's slops, is regulated by the MARPOL convention.
- The Probo Koala was following a normal, pre-arranged commercial route when it arrived in Amsterdam and Abidjan.
- The vessel's slops were reloaded onto the vessel in Amsterdam with the express permission of the local authorities.
- Abidjan is one of the largest and most sophisticated ports in West Africa and has handled oil-related cargoes since 1965. Ivory Coast is a signatory to the MARPOL convention and is obliged to provide facilities for slops discharge at Abidjan. The port has two working refineries with an operating capacity of approximately three million barrels of crude oil per annum. Ivory Coast is a producer, exporter and importer of both crude oil and oil products. Consequently the port is highly experienced in dealing with slops from oil tankers and vessels and in 2006 more than 30,000 tonnes of slops were safely unloaded at Abidjan. Trafigura, as well as other major oil companies, have been operating in the Ivory Coast for decades.
- The UK "class action" settlement vindicated Trafigura's long-held position about the nature of the slops.
- More than 20 independent experts established after long, careful and extremely detailed research that the slops (illegally dumped without Trafigura's knowledge by Compagnie Tommy) could not have caused the alleged deaths and serious injuries.
- The Joint Statement agreed and issued by the lawyers acting for the parties (included within this document) was fully endorsed by Mr Justice MacDuff, who said it was "100% truthful".
- Trafigura could not have foreseen the reprehensible and illegal way in which Compagnie Tommy dumped the slops. Trafigura has every sympathy with the Ivorian people but is aware of systemic medical conditions in the Ivory Coast and a wide misattribution of symptoms by local people to the effects of the slops, the smell of which could have given a false sense of toxicity. It is accepted now by Leigh Day as solicitors for the Claimants and by the BBC that the slops could at worst have caused flu-like symptoms and anxiety.
- The events surrounding the Probo Koala have highlighted issues about how governments around the world implement international conventions such as MARPOL and how local authorities oversee the operation of their port facilities. Trafigura is working to bring these areas to the attention of the relevant international and local organisations.

Definitions of key terms

Slops - a form of ships' wastes generated from cargo residues carried on board ships and during the cleaning of their tanks.

Mercaptans - a class of molecules containing sulphur, carbon and hydrogen which is commonly present in crude oil and also in refined oil products. Natural sulphur-containing chemicals, mercaptans are also commonly emitted from sewage treatment plants, paper and wood mills, chemical works, agricultural facilities and landfill sites.

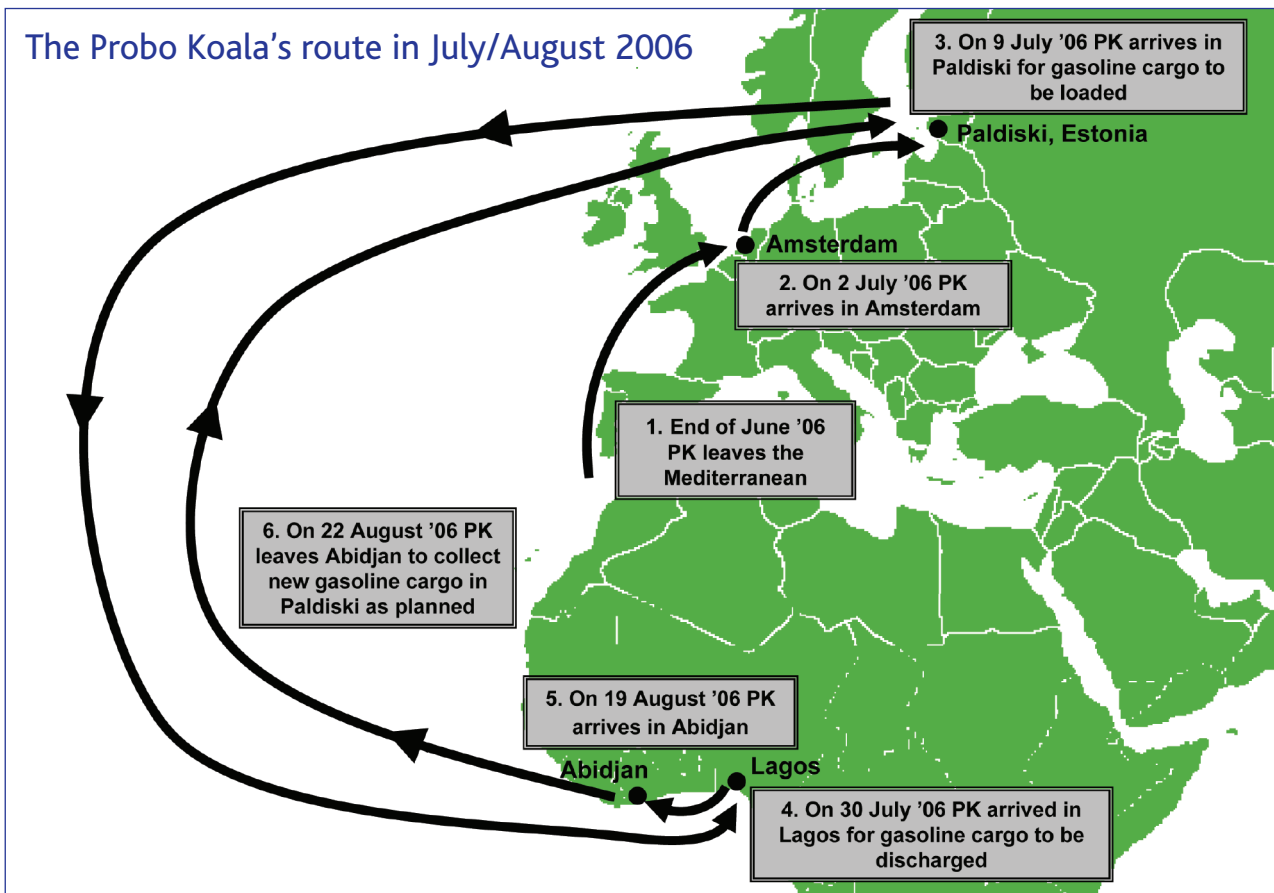
Naphtha - a commonly-traded and transported blendstock for gasoline, which is close to gasoline in composition and originates from normal refinery processes. Crude oil is refined and at various temperature ranges (distillations) will produce different products. For example, petrol, kerosene and diesel are all produced at different temperature ranges of the distillation of crude oil. Naphtha is one such product that is produced from the distillation of crude oil.

Coker naphtha - produced from further processing of heavier residues of crude oil. This processing, which is a common and widely undertaken process, is known as thermal cracking ("coking"), hence the naphtha is referred to as "coker" naphtha. Such products are currently commonly traded worldwide by many traders.

MARPOL - the handling of ship generated waste, including slops, is regulated by the international convention MARPOL 73/78 (MARPOL is short for 'marine pollution'). This convention was created to minimise pollution of the seas, including dumping of oil and exhaust pollution. Its stated object is: "to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances". Under MARPOL's provisions, a ship operator must - with limited exceptions - discharge slops at an adequately equipped port. MARPOL signatory countries (including the Netherlands and the Ivory Coast) are required to provide adequate facilities and licensed operators for the safe handling of slops.

Gasoline washing/Merox process - caustic washing of gasoline is carried out around the world as the first part of the two-step chemical process often referred to as Merox (MERcaptan OXidation). The primary purpose of the second oxidation step in the Merox process is not to reduce the gasoline's sulphur content, but rather to convert the sulphur into a less odorous form.

The Probo Koala's route in July/August 2006



If you require more information, please contact: info@trafigura.com