

# Trafigura & the Probo Koala

For events post 2016 please refer to:  
[www.trafigura.com/resource-centre/probo-koala/](http://www.trafigura.com/resource-centre/probo-koala/)

## Table of Contents

Trafigura and the Probo Koala .....	4
Timeline of Events .....	6
June 2006: Probo Koala leaves Mediterranean .....	6
July 2006: Probo Koala in Amsterdam .....	6
August 2006: Probo Koala from Lagos to Abidjan.....	7
August 2006: Probo Koala in Abidjan.....	8
September 2006: Arrival and arrest of Trafigura team .....	9
September 2006: Trafigura commissions the draft Minton Report .....	10
September 2006: Results of the NFI Report.....	10
September/October 2006: Probo Koala detained in Paldiski.....	11
November/December 2006: Probo Koala inspected in Fujairah.....	12
November 2006: Trafigura appoints Rt. Hon The Lord Fraser of Carmyllie to chair Probo Koala Inquiry.....	12
November 2006: Leigh Day & Co initiates High Court group action .....	12
February 2007: Agreement between Trafigura and the Ivorian Government .....	13
February 2007: Release of Trafigura executives .....	14
July 2007: Trafigura serves defence against Leigh Day & Co .....	14
March 2008: Ivorian Court of Appeal drops charges against Trafigura employees .....	15
April 2008: Charges brought against Trafigura in Amsterdam .....	15
October 2008: Trafigura and Leigh Day & Co case management agreement .....	15
October 2008: Head of Compagnie Tommy convicted .....	15
May 2009: BBC broadcasts defamatory Newsnight report.....	15
July 2009: WSP publishes independent report: no slops remain .....	16
September 2009: UN Special Rapporteur publishes report .....	17
September 2009: Trafigura vindicated in the English High Court .....	17
September 2009: Greenpeace files Complaint in The Hague .....	18
October 2009: The ‘super-injunction’ and The Guardian .....	18
March 2010: Lord Fraser issues second Interim Report of Probo Koala Inquiry .....	19
May 2010: The Guardian publishes apology to Trafigura .....	20
May 2010: Leigh Day & Co’s legal bill disclosed for Trafigura case.....	20
July 2010: Trafigura acquitted of one charge and convicted of other charges in Amsterdam.....	20
December 2010: Ivorian Court of Appeal dismisses civil claims against Trafigura.....	21
April 2011: Greenpeace Complaint dismissed in The Hague’s Court of Appeal.....	21
FAQS .....	22
June 2006: Probo Koala leaves Mediterranean .....	22
Where had the cargo on the Probo Koala come from?.....	22
Why did Trafigura need to mix cargoes?.....	22
Is Trafigura a toxic waste company? .....	22
What are slops?.....	22
What was the composition of the slops of the Probo Koala and how were they produced? .....	22
What are mercaptans – and why were they treated anyway? .....	23
Is the caustic washing/Merox process unusual? .....	23
So how does it work? .....	23
Were the slops toxic?.....	23
It’s said that the slops contained two tonnes of the ‘toxic gas’ hydrogen sulphide?.....	23
So where did this idea of hydrogen sulphide come from?.....	24
I’ve heard people say the process you used was illegal. Was it? .....	24
July 2006: Probo Koala in Amsterdam .....	24
What regulations govern ship waste and what are the responsibilities of various parties involved? .....	24
What volume of slops was removed by Amsterdam Port Services (APS)?.....	25
Why did the slops removal company APS hike up its price to such an extent? .....	25
August 2006: Probo Koala from Lagos to Abidjan.....	25
Why was the vessel then sent to Abidjan to discharge slops? .....	25
Was Abidjan equipped to treat such slops? .....	25
August 2006: Probo Koala in Abidjan.....	25
How was Compagnie Tommy selected as operator responsible for handling the slops? .....	25
Is it true that Compagnie Tommy was set up to deal with the Probo Koala’s slops after Amsterdam? .....	26

It was reported that Compagnie Tommy said it wasn't aware of what the slops contained. ....	26
What did Compagnie Tommy do with the Probo Koala's slops?.....	26
Were Trafigura's trading procedures deficient at the time of the incident? .....	26
Are the Probo Koala's slops still causing health problems in the Ivory Coast? .....	26
What measures have been taken to ensure such an event won't happen again? .....	27
There was an allegation that Trafigura met Abidjan port personnel in Paris in May 2006, before the Probo Koala went to the Ivory Coast. Is that true?.....	27
September 2006: Arrival and arrest of Trafigura team.....	27
What did Trafigura do upon becoming aware of the incident? .....	27
What steps did Trafigura take to secure the release of its executives? .....	27
September 2006: Trafigura commissions the draft Minton Report .....	28
What was the draft Minton report?.....	28
Why did the draft Minton Report later attract so much attention? .....	28
So why did Trafigura use Minton then if its report was not of use? .....	28
Didn't the draft Minton Report show that Trafigura had covered up the toxic waste problem? .....	28
Why did you try to keep the draft Minton Report secret?.....	28
September 2006: Probo Koala detained in Paldiski .....	29
Why does Greenpeace keep appearing in the Probo Koala story? .....	29
November 2006: Trafigura appoints Rt. Hon The Lord Fraser of Carmyllie to chair Probo Koala Inquiry.....	29
If Trafigura paid Lord Fraser to write the report how could the report be described as independent? .....	29
November 2006: Leigh Day & Co initiates High Court group action .....	29
Why was Leigh Day & Co claiming against Trafigura when it was Compagnie Tommy who dumped the slops? .....	29
January 2007: NFI publishes report .....	30
Did your slops kill people? .....	30
But wasn't one of the people convicted of manslaughter in Ivory Coast?.....	30
Why is the NFI Report so significant?.....	30
How does that leave the issue of all the people who undoubtedly did seek medical aid at the time? .....	30
So the slops couldn't have caused deaths, miscarriages and serious illnesses. Didn't they did contain chemicals that caused a range of skin diseases?.....	31
February 2007: Agreement between Trafigura and the Ivorian Government .....	31
How has Trafigura's trading with the Ivory Coast been affected? .....	31
June 2008: Charges brought against Trafigura in Amsterdam .....	31
Did Trafigura contravene Basel Convention regulations in Amsterdam? .....	31
October 2008: Head of Compagnie Tommy convicted .....	31
Wasn't Trafigura's subsidiary Puma Energy involved in the Abidjan trial? Didn't its manager leave the Ivory Coast before he was due to appear as a witness? .....	31
July 2009: WSP publishes independent report .....	32
What was the point of the WSP Report? Why bother producing it so long afterwards?.....	32
September 2009: UN publishes report .....	32
But the UN is a world-renowned and trusted entity – surely one of its organisations wouldn't produce an inaccurate report? .....	32
September 2009: Trafigura vindicated in the English High Court .....	32
Why did Trafigura agree to a settlement with Leigh Day & Co and its claimants, given it does not admit liability? .....	32
But Trafigura paid £30 million. Surely you admit there were serious injuries from the incident?.....	33
So, if Trafigura agreed a settlement, why was the court involved? .....	33
Once the proceedings in the Group Legal Action brought by Leigh Day & Co concluded why did you not publish the experts' reports? .....	33
May 2010: Leigh Day & Co's legal bill disclosed for Trafigura case.....	33
And what about the Ivorian claimants? I've read that they haven't received the money paid to Leigh Day & Co by Trafigura.....	33
May 2010: Greenpeace, the Dutch media and the bribery allegations .....	33
If the claims are so misleading, why hasn't Trafigura sued the Dutch media? .....	33
Why is Trafigura so litigious? .....	34
Greenpeace and others have frequently suggested that Trafigura has bullied journalists. Is this true? .....	34
July 2010: Trafigura acquitted of one charge but liable on two other charges in Amsterdam .....	34
Why did Trafigura think the judgment was 'fundamentally flawed'? .....	34
Glossary .....	35

## **Trafigura and the Probo Koala**

In 2006 Trafigura time chartered the Probo Koala, a tanker, for the transportation of oil products. The vessel carried out a procedure for caustic washing on several cargoes of one such product, coker naphtha, and needed to discharge a relatively small amount of residual waste (often referred to as 'slops'). Coker naphtha is a commonly available and widely traded product. The discharge and treatment of slops and waste materials from all vessels, including crude oil and product carriers, is an everyday occurrence around the world.

Trafigura appointed a licensed operator, Amsterdam Port Services BV (APS), to handle the treatment of the slops. After receiving the slops on their barge in Amsterdam, APS increased its price for treatment of the slops by 3,000% without justification. Trafigura rejected APS' offer and departed Amsterdam for Paldiski, Estonia where it was due to collect a cargo.

Subsequently at the port of Abidjan, in the Ivory Coast, Trafigura appointed a contractor licensed to handle the discharged slops. Abidjan is not a remote, third world backwater as implied by some media reports: it is a major African port and industrial city, the country is a major crude oil producer and exporter, it has a refinery adjacent to the port and other modern industrial facilities. In addition to the handling of wastes from refining oil, slops have been discharged there without incident many times before by international companies, including oil majors. The Ivory Coast was also a MARPOL signatory and Abidjan was explicitly registered to handle slops disposal. Trafigura had absolutely no reason to believe that the operation in Abidjan would be mishandled.

The discharge of slops to a nominated contractor, Compagnie Tommy, was conducted in accordance with local and international regulations, with the approval of the port authorities and in the presence of both the police and customs officials. Sadly, the contractor then dumped the slops illegally at sites around the city. Trafigura could not have foreseen these actions, which were in flagrant breach of both the operator's licence and Compagnie Tommy's contractual undertakings to Trafigura.

Residents from the district of Akouédo, just outside central Abidjan, later complained of a terrible smell (similar to rotten cabbages) coming from Abidjan's principal landfill site nearby. The odour was believed to have come from chemicals in the slops. In due course it was alleged that, among other things, the slops had contained hazardous materials that caused serious and long term injuries to a large number of residents from Akouédo and other locations around Abidjan. Investigations and court cases into this series of events have been conducted in the Ivory Coast, the UK and the Netherlands.

Neither Trafigura nor Puma Energy Côte D'Ivoire nor any of their staff were involved in the criminal proceedings in the Ivory Coast; no indictments were brought against any of them, not because of any legal technicalities but simply because the Prosecutor declared that there was no evidence of any illegality or misconduct by any Trafigura company or staff.

Following the proceedings in the English courts, it is now accepted, on the basis of the findings of 20 scientific experts, that the slops could at worst have caused 'low level flu-like symptoms and anxiety'.

Trafigura was extremely disappointed to be subsequently convicted on two counts in the Netherlands with regard only to the delivery of slops to, and its export from, Amsterdam. The company is currently vigorously appealing the decision.

Owing to the nature of the subject, Trafigura faced a barrage of stories and unfounded claims from the media, many of which were highly inaccurate. While the wilder statements were usually quickly withdrawn and followed by public apologies – from, among others, the BBC, the UK's The Times, The Guardian and The Independent newspapers – the damage had been done.

Mr Justice MacDuff, the judge presiding over the group action subsequently brought against Trafigura by London lawyers Leigh Day & Co, even commented: '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'.

The Probo Koala affair is a very sad episode in the history of Trafigura. The company was appalled and seriously concerned by Compagnie Tommy's dumping of the slops. This was exacerbated as uninformed rumours circulated, fear and alarm spread quickly among local communities, even long after the contents of the slops had been analysed and proved not to have been hazardous as alleged.

The moment Trafigura was informed of the situation, the company did everything possible to establish the true facts about the Probo Koala slops, assist in the clean-up operation and offer support to the Ivory Coast. Although the dumping was ultimately beyond its control, Trafigura sincerely regrets that it occurred.

However, it is important that perspective is maintained on the complex series of events before, during and after the incident and Trafigura's role in them – a side of the story which is rarely reported.

Trafigura is frequently asked: what has it done to ensure that an incident like this doesn't happen again?

While Trafigura strenuously maintains that it did nothing wrong and its staff acted in an appropriate manner throughout, using industry standard practices, the Probo Koala incident has undoubtedly been a catalyst for substantive and ongoing reviews of the company's operations.

At the present day Trafigura goes beyond what others typically conduct by way of due diligence on contractors and suppliers. The company has also developed standards that exceed the legal requirements for the design, operation and maintenance of vessels, terminals and facilities in the oil industry.

Trafigura firmly believes that its operating procedures, infrastructure, equipment, facilities, vessels, vehicles and railcars are not just equal to those of its competitors: they are unequivocally better than most.

Trafigura contributes to regional and global initiatives on material stewardship, product and waste management, where its input as a global player is welcomed and respected. The company intends to further develop that engagement.

## **Timeline of Events**

### ***June 2006: Probo Koala leaves Mediterranean***

In June 2006, the Probo Koala, a ship on long-term charter to Trafigura, left the Mediterranean en-route for Paldiski, Estonia.

A double-hulled vessel built in Busan, South Korea in 1989, the Probo Koala was an Ore Bulk Oil (OBO) carrier designed to transport both wet and dry cargoes. Its tanks held a total capacity of 51,610 cubic metres. On this trip, the ship had been engaged in the loading and discharging of cargoes of gasoline and gasoline blendstock, including coker naphtha.

The Probo Koala held a Certificate of Class from Lloyd's Register, and as such, complied with the associated rules and regulations.

Companies regularly improve and blend various types of fuel onboard ships to meet the exacting fuel specifications in different countries. These voyages of the Probo Koala were no exception. As an OBO carrier, the Probo Koala was fitted with coated tanks and was therefore fully equipped and permitted to carry out a two-step chemical operation known as caustic washing and the 'Mercox process'.

These particular cargoes of the Probo Koala contained higher than normal quantities of mercaptans. These substances, which exist in nearly all oils to some degree, emit an unpleasant sulphurous smell. Cleaning, by using the caustic washing/Mercox process, reduces the smell of the coker naphtha but does not actually remove the mercaptans themselves. Instead, they are converted into less smelly compounds called disulphides. It may seem a crude process but it is, in fact, simple chemistry that can be conducted using bulk quantities of fuel, caustic soda and a catalyst.

The technical capabilities of the Probo Koala enabled the crew of the vessel to carry out a caustic washing procedure safely – in accordance with all international regulations and statutory requirements.

Despite the sulphurous smell, no-one involved in the processing of the cargo or handling of the Probo Koala slops suffered any illness.

After the caustic washing, 528 cubic metres of slops (equivalent to 1.02% of the total capacity of the vessel) remained – a mixture of coker naphtha, water and spent caustic soda, with a small amount of catalyst. These were pumped into the Probo Koala's two slops tanks.

The Probo Koala was no 'toxic waste ship' as alleged by some: it carried a small volume of slops like almost every other ship carrying this type of cargo. The slops material was not unusual and was of a type that has been treated safely and responsibly by the industry in the past.

### ***July 2006: Probo Koala in Amsterdam***

On 2<sup>nd</sup> July 2006 the Probo Koala arrived at Amsterdam to change crew, refuel the ship, and discharge the slops.

Trafigura chose Amsterdam Port Services BV (APS), a company licensed by the Amsterdam authorities to handle the discharge of slops material in accordance with MARPOL requirements.

Trafigura intended to discharge only 250 cubic metres of the slops, as these carried the water and caustic soda waste.

Trafigura explained the exact nature of the slops and the cleaning process and APS provided an estimated cost of €27 per cubic metre, consistent with the market rate, which was agreed by both parties.

APS arranged for a tanker-barge, known as the 'Main VII', to be sent to meet the Probo Koala in order for the slops to be discharged. APS also took a number of samples of the slops.

However, after receiving the slops, APS attempted, with no justification, to increase the quoted treatment price to €1,000 per cubic metre – a 3,000% rise. APS claimed the Chemical Oxygen Demand (COD) level of the slops was higher than the figure than they had anticipated but provided no test results to substantiate the claim.

In reality, while high, the COD level of the slops material was irrelevant and was in fact comparable to common household products such as hair conditioner and shampoo. Sugars, fats and greases (including milk) also give high COD results.

Trafigura replied that APS had already been given a description of the slops based on Trafigura's knowledge of the material and stated that the revised rate was far too high.

On 4<sup>th</sup> July 2006, APS came back to Trafigura with a new offer of €750 per cubic metre, still 2,000% higher than the original estimate. By this point, Trafigura did not have full confidence in APS's ability to perform the operation and so rejected the revised offer.

One solution to the dispute between Trafigura and APS was to arrange the reloading of the slops into the Probo Koala. APS and the Amsterdam environmental authorities discussed the situation before APS was given the go-ahead to do just that. Samples of the slops in the barge were taken by the District Environmental Police (DEP), the local environmental unit of the Dutch police force.

On 5<sup>th</sup> July 2006, the vessel left Amsterdam for Paldiski in Estonia with the full knowledge and clear approval of the Dutch authorities.

### ***August 2006: Probo Koala from Lagos to Abidjan***

After loading a gasoline cargo in Paldiski, Estonia, the Probo Koala set sail to its delivery destination in Lagos, Nigeria. (Paldiski did not have the facilities to handle the slops.)

The Probo Koala arrived in Lagos on 30<sup>th</sup> July 2006. The cargo, 42,462 cubic metres of unleaded gasoline, was discharged to the state owned oil import company 'Pipeline Products Marketing Company Limited', completing on 16<sup>th</sup> August.

While in Lagos, the captain of the Probo Koala looked for a suitable contractor to take the slops ashore, since Nigeria was also a MARPOL signatory and therefore appropriate port reception facilities could be expected. Two local contractors made offers, but both the captain and Trafigura dismissed them because the facilities, equipment and processes were considered unacceptable.

The first offer involved removing the slops from the Probo Koala in an open barge without a vapour recovery system, while the second offer came from a company wishing to offload the slops into oil

drums with a view to allowing the slops to settle before reclaiming the useable oil and selling it on at market price.

On 17<sup>th</sup> August, the Probo Koala left Lagos on its return voyage to Paldiski. While en route, Trafigura explored the possibility of unloading the slops in the nearby port of Abidjan, Ivory Coast.

On 18<sup>th</sup> August, Trafigura nominated WAIBS, an experienced and government-affiliated port agent in Abidjan specialising in petroleum products. WAIBS had operated for many years in Abidjan and had been previously contracted by Trafigura and all the major oil companies.

WAIBS recommended a company called Compagnie Tommy, which duly produced its operating licences to prove it was permitted to carry out the work. Trafigura informed Compagnie Tommy of the nature of the slops and the necessity for correct and legal treatment, which it duly acknowledged.

All associated documentation was checked and, furthermore, staff at Puma Energy Côte D'Ivoire (Puma Energy CI), then a Trafigura subsidiary in the Ivory Coast, contacted the Abidjan port authorities who confirmed that Compagnie Tommy had the necessary technical expertise and certification to receive slops discharged from ships.

The Petroci Jetty was booked for the Probo Koala and Compagnie Tommy was appointed to treat the slops.

### ***August 2006: Probo Koala in Abidjan***

On 19<sup>th</sup> August, the Probo Koala arrived at the port of Abidjan in the Ivory Coast.

Although not on the originally scheduled itinerary, the port was on the route back to the Probo Koala's destination of Paldiski in Estonia.

Abidjan has one of the largest and most sophisticated ports in west Africa, and contains one of the region's most important refineries, with an operating capacity of approximately three million tonnes of crude oil per annum (about 22 million barrels).

Since 1965, the port had been handling oil-related cargoes for a number of major oil companies and was therefore experienced in operations relating to slops from vessels. Given that the Ivory Coast is a MARPOL signatory, it is entirely appropriate that the port was equipped to handle slops. Indeed, there was nothing to suggest its facilities or personnel were unable to treat the slops from the Probo Koala.

The unloading of the slops began at 13.30 on 19<sup>th</sup> August and finished at approximately 19.00 on 20<sup>th</sup> August. The discharge was recorded in the ship's Oil Record Book and Prime Marine Management discharge report. The slops were loaded into nine waiting trucks, under the supervision of the Port Authorities and Customs.

As they had requested it, the Dutch police were sent a copy of the discharge report.

While Trafigura and the captain and crew of the Probo Koala were led to believe the slops were being treated safely, Compagnie Tommy proceeded to dump them, untreated, at a number of locations in and around Abidjan. Its actions were reprehensible, illegal and in flagrant breach of its licence with the government and contractual undertakings to Trafigura.



On 21<sup>st</sup> August, residents from the district of Akouédo, just outside central Abidjan, complained about a terrible smell (similar to rotten cabbages) coming from Abidjan's principal landfill site nearby, which had been the scene of commercial and domestic waste disposal for more than 40 years. The odour was believed to have come from the chemicals in the slops.

By 25<sup>th</sup> August, the unpleasant, sulphurous odour associated with the slops had been identified in more locations around the city. The Ivorian Government reported the problem and requested assistance from the Secretariat of the Basel Convention, a global body that deals with, and advises on, the effects of hazardous waste.

### ***September 2006: Arrival and arrest of Trafigura team***

In early September 2006, reports of alleged casualties resulting from exposure to the slops in Abidjan were emerging.

By 11<sup>th</sup> September, representatives from the Secretariat of the Basel Convention had arrived in the city, along with agencies including the United Nations Disaster Assessment and Coordination (UNDAC) and the World Health Organisation (WHO). A specialist team from UNDAC was set up to inspect potential dump sites, working together with the Ivorian Government.

By 12<sup>th</sup> September, all known dump sites had been inspected in collaboration with CIAPOL (Centre Ivorien Anti-Pollution), UNOSAT (United Nations Institute for Training and Research) and other agencies. A preliminary report was released within a week but few of the samples taken by CIAPOL were submitted for analysis, and the scope of the analysis was limited.

On 14<sup>th</sup> September, Trafigura sent its own team to Abidjan to offer technical, medical and financial assistance to the investigation. While Trafigura could not have foreseen the disgraceful actions of Compagnie Tommy, it was deeply concerned on hearing the reports coming out of Abidjan.

The Trafigura delegation went to Abidjan in good faith to help deal with the emergency. It included two executives, Claude Dauphin (Trafigura's Chairman) and Jean-Pierre Valentini (a senior manager of the company), a team of doctors, a geologist and a refining engineer.

Captain N'Zi Kablan (Trafigura's local manager of Puma Energy CI) Trafigura's subsidiary company in Abidjan) also joined the delegation.

On 18<sup>th</sup> September, four days after arriving in Abidjan, Claude Dauphin, Jean-Pierre Valentini and Captain N'Zi Kablan were arrested by Ivorian authorities and subsequently imprisoned by way of pre-trial detention for five months in Abidjan's Maca prison.

By 17<sup>th</sup> September, representatives from TREDI, the French environmental remediation company, had also arrived in Abidjan. TREDI had been commissioned by the Ivorian Government to begin an extensive clean-up operation at Akouédo and the other sites. TREDI went on to remove approximately 9,535 cubic metres of material – approximately 18 times more material than the volume of slops (528 cubic metres) claimed to have been dumped in and around Abidjan.

Subsequent scientific analysis of the material removed from Abidjan by TREDI found contamination that could never have originated from the slops. As was later proven, the dump sites used by Compagnie Tommy had been repeatedly and extensively contaminated in the past. The material extracted was later incinerated at the TREDI plant at Salaise-sur-Sanne, in south-eastern France.

Meanwhile, UNDAC had been carrying out an environmental impact assessment with a team of experts from the French Civil Protection. On 18<sup>th</sup> September, UNDAC reported:

'It is believed that three weeks after the dumping of the waste the concentrations of the concerned compounds in the air are low and no further adverse health effects are to be expected. However the chemicals, especially mercaptans have strong smells at low concentrations [and are] detectable by the human nose at concentrations far below danger levels. This may give a false impression of toxicity.'

### ***September 2006: Trafigura commissions the draft Minton Report***

On 7<sup>th</sup> September 2006, Trafigura commissioned Minton, Treharne & Davies Ltd (Minton) to prepare a document, based on purely theoretical information, on what may have happened in Abidjan. This was later to become known as the 'Minton Report', although in fact it was only ever a first draft report.

Trafigura's request was not unusual. Minton is frequently asked to give an initial view of a problem based on limited information, usually with a request to ascertain the extent of the information required on which to base a more detailed opinion or advice.

The author of the draft Minton Report produced a generic desktop study for Trafigura in which he assessed, as far as he could, the potential composition of the slops and the nature of the effects of certain chemicals.

He did not visit, and could not have visited, the Ivory Coast in the time available, nor was he able to obtain any samples at that stage. It was all hypothetical. As the author stated on the opening page of the document:

'This report is prepared on the basis of the limited information currently available to us and accordingly our views may change in due course.'

The draft report put forward various generic hypotheses on the effects of certain chemicals and gases, including hydrogen sulphide, which, as it transpired in later analysis, were not present in the actual slops in its molecular form. Yet Minton's hypotheses would later be seized upon and irresponsibly misinterpreted in certain sections of the media.

In fact, the draft Minton Report was never finalised, as the contents were superseded within a matter of days by comprehensive analysis of the actual slops. This analysis was carried out by the Netherlands Forensic Institute (NFI), from the samples taken by the District Environmental Police (DEP) in Amsterdam.

John Minton, of Minton, Treharne & Davies, would publicly state on 20<sup>th</sup> October 2009 that:

'Any suggestion that the draft September 2006 report was anything other than an initial desktop study, which remained in draft and which was quickly superseded when we were first provided with reliable facts, would be wholly incorrect.'

With the analysis of the actual slops by the NFI, the theoretical report by Minton was no longer relevant.

### ***September 2006: Results of the NFI Report***

On 23<sup>rd</sup> September 2006, Trafigura was informed of the preliminary results of the analysis of the slops carried out by the Netherlands Forensic Institute (NFI). The samples had been taken in July 2006, from the Main VII barge in Amsterdam, the Probo Koala and the APS treatment plant.

The full NFI Report was published in January 2007 and would become central to the subsequent proceedings in the English High Court, which concluded with a settlement between Trafigura and Leigh Day & Co, the law firm representing the residents of Abidjan, in September 2009.

Both parties accepted and acknowledged that the results of the NFI analyses represented the best evidence available as to the composition of the Probo Koala's slops.

It was later claimed by some that the NFI Report showed the slops contained two tonnes of hydrogen sulphide. This is not only incorrect but demonstrates a fundamental misunderstanding of the facts and a serious misinterpretation of the report itself. A case in point was the BBC's May 2009 Newsnight report, which contained serious allegations based on its misinterpretation of the NFI Report. The BBC consequently withdrew and apologised for these allegations, having acknowledged that it simply misunderstood the NFI's findings.

The NFI Report stated that the slops registered a pH of 14, a reading that was extremely alkaline. At this level it was impossible, firstly, for the material to contain hydrogen sulphide in its molecular form or, secondly, that the composition of the slops could have been such that they caused the harmful injuries as alleged.

### ***September/October 2006: Probo Koala detained in Paldiski***

On 9th September 2006, the Probo Koala arrived back in Paldiski, Estonia.

The Amsterdam police had earlier expressed interest in inspecting the ship when it arrived in Estonia. Trafigura offered to organise transport for them to Estonia or even to bring the ship back to Amsterdam for inspection, but the police then said it was not necessary.

In the meantime, chemists from AVR, the specialist company employed by APS to analyse the slops in Amsterdam, stated in an analysis of the material that they didn't think there had been anything unusual about the slops, adding that they would have been treated as standard chemical waste slops by incineration. This was confirmed by the NFI Report findings several weeks later.

On 23rd September 2006, Estonian authorities detained the Probo Koala after a request from the Banny Commission, set up in the Ivory Coast to investigate the incident. Trafigura made the Probo Koala available for an onboard investigation. All the crew were interviewed and physically examined. None of the crew showed nor reported any signs of ill health.

On 28th September, the European Environment Commissioner arrived in Estonia to hold an inquiry regarding the Probo Koala. Under the supervision of the local authorities, slops, which had been generated as a result of cleaning the Probo Koala's tanks following the discharge of the vessel's latest gasoline cargo (i.e. not slops that were discharged in Abidjan), were taken for testing at an Estonian facility in accordance with requirements of the Ministry of Environment.

At the conclusion of the investigations, the Estonian Prime Minister publicly stated: 'I can assure you that there is nothing mystical in the waste from the Probo Koala - actually, it only includes oil and oil products. There is nothing to fear - it is not some extraordinary poison, but rather only normal oil compounds.'

On 15th October, the Probo Koala was cleared to leave Paldiski.

### ***November/December 2006: Probo Koala inspected in Fujairah***

After the discharge of a gasoline cargo at the United Arab Emirates port of Jebel Ali, Minton, Treharne & Davies (Minton) monitored tank cleaning and slop removal operations from the Probo Koala.

Minton reported that residues remained in all the cargo tanks, with a number of areas covered in a very hard 'residue crust consisting primarily of sodium carbonate. Minton broke through the crusts to establish whether there were any signs of hydrogen sulphide or mercaptans – no measurable levels were detected.

Samples were collected, measured and analysed, and the estimated 20 cubic metres of residues themselves were bagged and removed.

### ***November 2006: Trafigura appoints Rt. Hon The Lord Fraser of Carmyllie to chair Probo Koala Inquiry***

On 6<sup>th</sup> November 2006, Trafigura appointed the Rt Hon The Lord Fraser of Carmyllie QC to chair an inquiry into the Probo Koala incident. A former Minister for Energy under the Conservative Government, Lord Fraser also had ultimate responsibility for the Pan Am 103 Lockerbie investigation in his role as Lord Advocate.

The inquiry would seek to investigate Trafigura's own operating procedures, port facilities and practices in the relevant countries and consider existing legislation and international conventions. Lord Fraser was afforded full access by Trafigura and encouraged to engage specialist advisors in a number of key areas.

Lord Fraser said: 'I am happy to undertake this inquiry. My terms of reference provide for transparency and independence. Without prejudging my conclusions, I hope that my report for Trafigura will be of wider benefit to companies operating in this field and may influence international thinking on these issues.'

### ***November 2006: Leigh Day & Co initiates High Court group action***

On 7<sup>th</sup> November 2006, Leigh Day & Co, a London law firm specialising in personal injury and compensation cases, began court proceedings against Trafigura. Acting on a 'no win, no fee' basis, Leigh Day & Co launched an English group action on behalf of Ivorians alleging to have suffered serious injuries as a result of exposure to the slops.

Trafigura believes that the claims were brought to the English courts first because Trafigura Limited was domiciled in the UK and second because Leigh Day & Co had gone to considerable lengths to file the case ahead of a potential filing by another law firm in the Netherlands.

Before conducting any detailed investigations or even visiting the Ivory Coast, Leigh Day & Co alleged, among other things, that the slops had contained hazardous materials that caused serious and long term injuries to its claimants. This was clearly contrary to the various analyses in the Ivory Coast, the Netherlands and Estonia by different independent scientific authorities and environmental specialists.

Trafigura denied any wrongdoing, maintaining that the slops did not contain the hazardous materials claimed and could not have caused the alleged injuries. The company also added that it had not broken any laws in relation to the Probo Koala. The fault for the illegal dumping lay entirely with Compagnie Tommy, the local independent contractor.

While Trafigura instructed a detailed review by a number of independent experts, Leigh Day & Co spent the first 18-24 months of proceedings concentrating on the collection of claimants rather than conducting its own forensic examination of the issues. In its original Claim Form, dated 7<sup>th</sup> November 2006, Leigh Day & Co cited one claimant; this was followed closely by 10 more cases. Thereafter, the number of claimants on Leigh Day & Co's Group Register grew exponentially. The figure ultimately reached 29,614 claimants.

Having been invited to Abidjan by Greenpeace, Leigh Day & Co collected its claimants through building relationships with various influential local representatives and 'victims' associations', who were enlisted and – crucially – incentivised to sign up as many clients as possible in return for a 3% contingency fee against any damages successfully recovered by the enlisted client. To this purpose, representatives were provided with draft Claimant Questionnaires and pro-forma Medico-Legal Reports.

The allegations were extremely serious – including, for example, that the slops had killed and disfigured scores of local inhabitants – it therefore became necessary to conduct a detailed and rigorous investigation in order to establish the facts and to understand exactly what could have caused the injuries alleged.

Trafigura and Leigh Day & Co each instructed a number of distinguished experts, many of them world-renowned in their fields, to investigate the incident and its aftermath. On the basis of this detailed analysis, Trafigura was later able to show conclusively that the claims made by Leigh Day & Co on behalf of its claimants had absolutely no merit. Leigh Day & Co later agreed with the findings in the form of a joint statement with Trafigura.

In addition to launching court proceedings on 7<sup>th</sup> November, Martyn Day, of Leigh Day & Co, also posted a defamatory press statement on his firm's website on 8<sup>th</sup> November, claiming Trafigura had recklessly and cheaply disposed of what it knew to be toxic waste and was therefore responsible for a large number of deaths and miscarriages in Abidjan. He also made further defamatory statements in the media. Trafigura immediately launched libel proceedings against Leigh Day & Co, which were later, in the light of expert evidence, settled in Trafigura's favour. The allegations were withdrawn and removed from Leigh Day & Co's website.

### ***February 2007: Agreement between Trafigura and the Ivorian Government***

On 14<sup>th</sup> February 2007, a Settlement Agreement was reached between Trafigura and the Ivorian Government in relation to the latter's participation as a civil party to a criminal legal action taken against Trafigura. Under the agreement Trafigura made a payment of US\$198 million to the Ivorian Government. The Agreement also included a promise by the Ivorian Government to guarantee that it would look after all claims arising from the event.

The payment did not involve any admission of liability. However, under the circumstances, and given Trafigura's longstanding relationship with the nation, it was felt that such a settlement was the best way for the people of Abidjan, the Ivorian Government and Trafigura to move on. Critically, the Trafigura Group has operated for a long time in the Ivory Coast; the Group's subsidiaries employ many people and have invested millions of dollars in infrastructure and facilities in the country.

The Settlement Agreement between Trafigura and the Ivorian Government also stipulated that independent environmental audits would be carried out in Abidjan at the dump sites. Burgeap, a leading environmental consultancy, was duly appointed by both parties to undertake an audit of the reported dump sites, and Trafigura agreed to pay for any additional remedial work required.

### ***February 2007: Release of Trafigura executives***

On 15<sup>th</sup> February 2007, Trafigura executives Claude Dauphin, Jean-Pierre Valentini and Captain N’Zi Kablan were released after being held in jail without trial in the Ivory Coast.

Following his release from custody, Trafigura’s Chairman Claude Dauphin said:

‘We went to the Ivory Coast on a mission to help the people of Abidjan, and to find ourselves arrested and in jail as a result has been a terrible ordeal for ourselves and our families. If any good can come of this, myself and my colleagues now look forward to Trafigura and the Ivorian Government working together for a better future for the people of Abidjan.’

### ***July 2007: Trafigura serves defence against Leigh Day & Co***

In July 2007, Trafigura served its defence against Leigh Day & Co’s English group action, the first time the company had the opportunity to formally answer the many false and misleading accusations that had been made against it following the events in the Ivory Coast.

The key points based on detailed expert analysis, were that:

- Trafigura did all that could be required of it by following all the current internationally recognised procedures. Trafigura could not have foreseen that Compagnie Tommy would unlawfully dump the untreated slops in and around Abidjan.
- The slops, while having an unpleasant smell, simply could not have led to the serious illnesses and injuries alleged. It was pointed out that the Probo Koala’s crew had previously been exposed to the slops without suffering any illness or injury.
- The local environment already suffered from existing heavy pollution long before the Probo Koala’s arrival. For example, a proportion of the slops were dumped in or around Akouédo, a village on the outskirts of Abidjan. Akouédo was also the location of a large pre-existing dumpsite, which had been the scene of commercial and domestic waste dumping for over 40 years. Sadly, as a result of pollution associated with such dumping, the local population had suffered significant long-term health issues long before the Probo Koala arrived in Abidjan, including lung infections and skin and eye irritation, all of which is well-documented. Of the village’s 5,000 population, only one resident was aged over 70 and only 30 were over the age of 60.
- It is Trafigura’s view that the smell from the Probo Koala’s untreated slops prompted local people to seek hospital treatment following wildly inaccurate media reporting in Abidjan and also the offer of free health care from the Ivorian Government, although the slops could not have caused such an incidence of symptoms.

### ***March 2008: Ivorian Court of Appeal drops charges against Trafigura employees***

On 19<sup>th</sup> March 2008, the Ivorian Court of Appeal (the Chambre d'Accusation) 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, for there was no case to answer. This decision was made with the benefit of all the investigations by the various authorities and the scientific evidence from analysis of the slops.

### ***April 2008: Charges brought against Trafigura in Amsterdam***

On 29<sup>th</sup> April 2008, the Dutch Public Prosecutor brought charges against Trafigura, its Chairman, and one of its employees, together with Amsterdam Port Services BV (APS), a director of APS, the City of Amsterdam and the Probo Koala's Captain. The charges related exclusively to events in Amsterdam, not Abidjan. One charge was of forgery relating to a declaration of the Probo Koala slops in Amsterdam. The other charges were, in all but one case, technical and primarily concerned the question of which regulation (Basel Convention or MARPOL) was applicable to the discharging and reloading of some of the slops when the Probo Koala had called at the port of Amsterdam in July 2006.

Trafigura vigorously denied any wrongdoing for the events in Amsterdam. The Amsterdam Court dismissed the case against Trafigura's Chairman – that decision was subsequently upheld by the Court of Appeal. However, the Prosecutor's further appeal to the Supreme Court meant the case was referred back to the Court of Appeal for reconsideration.

### ***October 2008: Trafigura and Leigh Day & Co case management agreement***

In October 2008, Leigh Day & Co agreed to a case management proposal by Trafigura. Under the terms of the proposal, the proceedings would focus only on issues of causation – i.e. what, if any, impact the dumped slops may have had on the claimants' health.

The proposal was not an admission of liability by Trafigura but was designed a) to be relevant and beneficial to the claimants and b) to save the time and huge cost of further debating the more technical issues relating to the English group action which, ultimately, would have only really benefitted Leigh Day & Co.

### ***October 2008: Head of Compagnie Tommy convicted***

On 22<sup>nd</sup> October 2008, Salomon Ugborugbo, managing director of Compagnie Tommy, was convicted in Abidjan as a result of illegally dumping the slops and sentenced to 20 years in prison. Essouin Koua Desiré the WAIBS shipping agent who had recommended Compagnie Tommy, was jailed for five years. Ten other defendants, including various local shipping officials, were acquitted.

No charges were brought against Trafigura, since the Court of Appeal in Abidjan had already ruled in March 2008 that Trafigura employees or associates had no case to answer. Nonetheless, Trafigura welcomed the conviction of those responsible for the dumping of slops in and around Abidjan.

### ***May 2009: BBC broadcasts defamatory Newsnight report***

On 13<sup>th</sup> May 2009, the BBC broadcast a 15-minute item about the Probo Koala episode on its flagship Newsnight programme. Libellous, one-sided and deeply irresponsible, the 'report' falsely described

the incident as comparable with the Union Carbide Bhopal disaster and wrongly claimed the slops had caused deaths, miscarriages and serious illnesses in Abidjan. A related website article repeated the allegations.

Among a series of factual blunders, the BBC grossly misinterpreted the NFI Report in respect of the composition of the slops, wrongly concluding that they contained and generated two tonnes of hydrogen sulphide. The Newsnight report went on to allege that 16 Ivorians had been killed by exposure to the slops.

Unlike other, less respected outlets, which had published similar false allegations, the BBC is a renowned broadcaster whose output commands global respect. Under these circumstances, Trafigura felt that unless these allegations were challenged and shown to be false, not only viewers of the BBC but also a much wider worldwide audience would have incorrectly given them credence.

On 17<sup>th</sup> December 2009, the BBC accepted that its allegations were untrue – and withdrew them in full. The BBC broadcast an apology as the opening item on Newsnight the same day – an unprecedented step reflecting the extent to which the broadcaster acknowledged and accepted responsibility for its error.

In addition to the apology, the BBC also agreed to pay damages (which Trafigura donated to charity) and Trafigura's legal costs.

### ***July 2009: WSP publishes independent report: no slops remain***

On 24<sup>th</sup> July 2009, WSP Environment & Energy (WSP) published an independent report following a series of environmental investigations at the suspected dump sites in and around Abidjan.

In December 2008, WSP had been appointed to conduct an independent assessment of the suspected dumping locations. Its terms of reference were simply to establish if contamination at the sites remained in situ and if so, whether it posed any health risks.

Despite the unstable political and security situation in Abidjan WSP visited 14 of the suspected sites, and then collected air, soil, sediment and surface water samples from a representative sample of these sites and a number of control sites. These were analysed in appropriately accredited analytical laboratories in the UK. Wherever there were two or three differing levels of analytical testing protocol, WSP would always apply the most stringent.

WSP essentially looked for 'marker' elements that could only have come from the slops. It found none, despite careful analysis. Given that material equivalent to approximately 18 times the original volume of the slops was removed from the sites, it is not surprising that there was none to be found.

The WSP analysis did identify other health and environmental issues in Abidjan caused by poor municipal waste disposal and air/surface water pollution – but, crucially, these were all unrelated to the slops.

WSP also assessed the progress of 'Operation Clean City', a clean-up campaign launched in Abidjan in March 2009 with World Bank funding, and saw some evidence of success in the main streets of Abidjan. However, it concluded that the municipal waste problem in the city was far from resolved.



### ***September 2009: UN Special Rapporteur publishes report***

On 3<sup>rd</sup> September 2009, Professor Okechukwu Ibeanu, a Special Rapporteur for the UN's Human Rights Council, published a 21 page report concerning the dumping of the Probo Koala's slops and their alleged effects on the local population.

Professor Ibeanu spent little time in the Ivory Coast during his 'investigation'. His final account lacked scientific rigour, appropriate research and was not supported by any verifiable evidence.

Trafigura fully recognises and respects the vital work undertaken on behalf of millions of people around the world by organisations affiliated to the United Nations, including the UN's Human Rights Council (UNHRC), but the company was utterly dismayed by the lack of precision in this particular report.

Trafigura offered Professor Ibeanu, on many occasions, assistance and extensive access to totally independent, properly sourced information, such as the WSP investigations in and around Abidjan. However, he made no reference to any such independent work in his report. Instead, despite the findings of independent studies conducted by the Netherlands Forensic Institute (NFI), scientific experts in Estonia, environmental analysts in the Ivory Coast, France, the UK and the Netherlands, medical consultants in the UK and elsewhere, he claimed it was likely that the Probo Koala slops had caused death and serious injury. Not only were his conclusions simply wrong but they also succeeded in diverting attention away from the genuine health and environmental issues affecting the people of Abidjan.

The lack of evidential analysis of Professor Ibeanu's report was exposed within weeks of publication by the conclusions in the Agreed Joint Statement between Trafigura and Leigh Day & Co in the English group action proceedings and, later, by the BBC's withdrawal of - and apology for - its allegations. Unlike Professor Ibeanu's report, both reflected a full and detailed analysis of the evidence, by leading and world-renowned independent experts, whose conclusions were fully endorsed by the group action judge and accepted in full by Leigh Day & Co and the BBC.

### ***September 2009: Trafigura vindicated in the English High Court***

Twenty international independent medical and scientific experts were unable to identify any link between exposure to the chemicals released from the Probo Koala's slops and deaths, miscarriages and serious illnesses in Abidjan. Consequently, on 19<sup>th</sup> September 2009, Trafigura's position was vindicated when the English group action claim was settled.

As a result of this expert evidence, the claimants' own lawyers, Leigh Day & Co, acknowledged in an Agreed Joint Statement that 'the slops could at worst have caused a range of short term low-level flu like symptoms and anxiety'. They also accepted that evidently many of the claims made in Abidjan had been for symptoms completely unrelated to exposure to the slops.

The settlement was reached without any admission of liability from Trafigura. As Trafigura has always maintained, it could not have foreseen the disgraceful actions of Compagnie Tommy which, as demonstrated by the convictions in the Ivory Coast, was called to account for the dumping of the slops.

While the evidence shows that the slops simply could not have caused the injuries alleged by Leigh Day & Co, as part of the settlement, Trafigura agreed to make a low-level payment of £950 per claimant (less than a fifth of the £5,000-£6,000 sum that Leigh Day & Co had originally been seeking).

On 23<sup>rd</sup> September, Mr Justice MacDuff, who had been due to hear the case had it gone to trial, said: 'From where I sit and from what I have seen of the [Court] papers, the Joint Statement is 100% truthful.'

'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.'

As a result of the same independent expert evidence, the libel proceedings against Leigh Day & Co were also settled in Trafigura's favour. Leigh Day & Co agreed to withdraw its previous remarks and remove all offending statements from its website. The company also agreed to publish the Agreed Joint Statement prominently on its website for 21 days.

### ***September 2009: Greenpeace files Complaint in The Hague***

On 16<sup>th</sup> September 2009, Greenpeace filed a Complaint with the Court of Appeal in The Hague against the decision not to prosecute Trafigura in the Netherlands.

The Complaint was, in effect, an attempt to force the Public Prosecutor's Office into prosecuting Trafigura and its executives as a result of the dumping of slops from the Probo Koala by Compagnie Tommy in August 2006.

The Greenpeace allegations – based neither on any genuine research nor evidence – ran contrary to the findings of totally independent scientific analysis and assessment of the incident, and the findings of various courts and investigations.

On 13<sup>th</sup> April 2011, The Court of Appeal found part of the Complaint inadmissible and dismissed the remainder outright. This decision is irrevocable and not appealable.

### ***October 2009: The 'super-injunction' and The Guardian***

In early September 2009, Trafigura learnt that a legally privileged and confidential document – known now as the draft Minton report – had been unlawfully obtained and passed to The Guardian, a British newspaper.

Given the timing of the report's sudden appearance at The Guardian in early September 2009 (as the full hearings of the personal injury claims in London approached), the report appeared to have been sent in an attempt to undermine Trafigura's position that the slops of the Probo Koala could simply not have caused the alleged deaths, miscarriages and serious illnesses in Abidjan, Ivory Coast – a position which was confirmed by independent evidence contained in the NFI Report and subsequently by the findings of 20 independent scientists and doctors.

On 11th September 2009, Trafigura obtained an interim injunction – to which The Guardian consented – preventing publication of the draft Minton Report on the grounds that it was confidential and legally privileged, and had been leaked to the paper unlawfully. Trafigura also believed that The Guardian and other media would misinterpret and misrepresent the significance of the report.

The High Court judge decided that at that stage, it was also appropriate that the Guardian should be prevented from identifying Trafigura or reporting that the company had obtained an injunction.

The website Wikileaks published the draft Minton Report several days after the injunction was granted.

A month later, on 12th October 2009, The Guardian suddenly provided Trafigura with just a few hours' notice of an article it intended to publish on a Parliamentary Question about the draft Minton report. The written question, which had been posted on the Parliamentary website, had been tabled by Paul Farrelly MP, a former journalist for The Guardian's sister paper The Observer. The answer to the question was due to be given in Parliament on 14th October.

The Guardian argued that since this information was now in the public domain, the anonymity order (preventing Trafigura being identified as having obtained an injunction) should be dropped.

Trafigura's lawyers (Carter-Ruck) quickly made clear to The Guardian that they would discuss a variation to the injunction urgently and revert on the morning of the 13th October, the day before the question was due to be answered in Parliament.

Sadly, despite this, and without any further notice, The Guardian published a wholly misleading story on its website on the night of 12th October, saying it had been 'gagged' from reporting Parliament. A blogger picked up the story, and the false and highly misleading details were repeated elsewhere overnight and in The Guardian the following morning.

The Guardian articles of 12th and 13th October, and numerous subsequent articles by The Guardian since, have been a complete distortion of the facts. When the injunction order was made, clearly neither Trafigura nor its lawyers (nor even The Guardian) could possibly have known a question on the subject would have been tabled a month later in Parliament.

Not for one moment did Trafigura or Carter-Ruck ever improperly gag, or attempt to gag, media reporting of UK Parliamentary Questions.

The injunction had been granted a month earlier, but was then varied as soon as was reasonably possible – within one day – so that The Guardian and others could report the Parliamentary Question.

A week later, on 16th October 2009, Trafigura lifted the injunction in its entirety, following widespread publication of the draft Minton Report overseas. The next day, The Guardian took a step that in itself demonstrated why it was that the injunction, taken out by Trafigura, had been a valid and appropriate step: The Guardian printed an inaccurate and misleading article that completely distorted both the status and the contents of the draft Minton Report.

Trafigura had believed from the start that The Guardian and other media would misinterpret and misrepresent the significance of the draft Minton Report – this was exactly what happened.

In spite of the facts and the corresponding chain of events The Guardian continues to sensationalise the Minton Report and the injunction story to this day.

### ***March 2010: Lord Fraser issues second Interim Report of Probo Koala Inquiry***

On 31<sup>st</sup> March, Lord Fraser issued his second Interim Report of the Probo Koala Inquiry. He had issued his first Interim Report in May 2008, but felt it inappropriate to conduct a more detailed inquiry while certain legal proceedings were ongoing.

Since the publication of the first Interim Report, Lord Fraser had been able to conduct a much more detailed investigation of the events surrounding the Probo Koala incident and its aftermath – although outstanding criminal proceedings still prevented him finally completing his work.

Lord Fraser declared that having examined Trafigura's procedures: 'There appears to me to be no glaring departure by Trafigura from procedures followed by other oil trading companies. BP's

procedures can be accessed on the internet and I am not aware of any substantial departure by Trafigura from what is good trading practice and no 'whistleblower' has contacted me to suggest the contrary.'

### ***May 2010: The Guardian publishes apology to Trafigura***

On 6<sup>th</sup> May, The Guardian published an apology to Trafigura for an article of 26<sup>th</sup> April 2010 in which it had falsely linked the Probo Koala dumping of slops to the deaths, miscarriages and serious illnesses of a number of west Africans.

The newspaper accepted that the Agreed Joint Statement of September 2009, which confirmed the conclusions reached by the independent experts, describing the effects of the dumping as 'at worst being 'low-level' illness, as opposed to deaths, miscarriages and serious illnesses. We apologise for our error.'

### ***May 2010: Leigh Day & Co's legal bill disclosed for Trafigura case***

On 10<sup>th</sup> May 2010, it was reported that Leigh Day & Co had submitted a legal bill of £105m to the Court in relation to the settled English group action of September 2009. The costs claim became the largest of its kind for any personal injury or group litigation proceedings in legal history.

Trafigura responded to the submission by claiming the amount was 'wholly unjustified'. Simon Nurney, a partner at Macfarlanes, which represents Trafigura, said:

'Our view is that, if the factual and expert evidence had been obtained up front, in line with the pre-action protocol, significant time and costs would have been avoided. By the end the claimants were forced to accept that, on the expert evidence, they couldn't demonstrate any link to long-term or serious injuries.'

In a judgment on issues related to the costs, the Senior Costs Judge Master Hurst cut the claimed success fee from 100% to 58%, a reduction of £20m saying that the claimed legal costs appeared 'disproportionate'. Trafigura has appealed certain aspects of the judgment and the case will go to the Court of Appeal in due course.

### ***July 2010: Trafigura acquitted of one charge and convicted of other charges in Amsterdam***

On 23<sup>rd</sup> July 2010, the Amsterdam Court acquitted Trafigura of the charge of forgery relating to a declaration of the Probo Koala slops. However, the company was convicted of two violations of Dutch and EU laws concerning the management of dangerous goods and the shipment of waste. Trafigura was ordered to pay €1m in penalties, half the amount sought by the prosecution. In addition, Trafigura's employee involved in the incident was also convicted of concealment, and was given a fine and a suspended prison sentence. (NB. as seen below this decision was later reversed).

The verdict of the Court put forward a wildly divergent interpretation of the applicable international conventions, EU and Dutch law. Trafigura's Dutch lawyers advised that there were clear grounds for appeal, particularly regarding how the court had interpreted the scope and provisions of the old European Waste Shipment Regulation (259/93/EC) and the Court's failure to examine the usual application of the MARPOL Convention and EU Port Reception Facilities Directive to the slops material.

Trafigura and the employee charged categorically denied any wrongdoing. The company maintains that the Court's guilty verdict on the technical violations charges was fundamentally flawed. Both Trafigura and the employee (separately advised) lodged appeals against the verdicts. On Friday 1<sup>st</sup> July 2011, the Court of Appeal in Amsterdam reversed the decision of the District Court in the case of the employee; that conviction and the sentence have both been reversed on appeal and, although the prosecutor has since given notice of appeal to the supreme court, they no longer stand. The Appeal case in regard to the Company is due to be heard in the autumn.

Separately, on 19<sup>th</sup> December 2009 the Amsterdam Court dismissed the case against Trafigura's Chairman for lack of evidence, a decision that was upheld by the Court of Appeal. The Prosecution Service successfully lodged an appeal in the Supreme Court against that decision. On 6<sup>th</sup> July 2010 The Supreme Court then sent the case back to the Court of Appeal to rule on the application again, taking its decision into account.

***December 2010: Ivorian Court of Appeal dismisses civil claims against Trafigura***

In the Ivory Coast a number of different claims were made, alleging injuries and illnesses caused by the slops. Trafigura believes these were without merit. The Court of Appeal has rejected the first group in its entirety, although there are others still pending.

***April 2011: Greenpeace Complaint dismissed in The Hague's Court of Appeal***

On 13<sup>th</sup> April 2011, The Court of Appeal at The Hague announced its judgment on Greenpeace's Complaint against the decision of the Public Prosecutor in the Netherlands not to prosecute Trafigura for the dumping of illegal waste in the Ivory Coast. The Court of Appeal found part of the Complaint inadmissible and dismissed the remainder outright. This decision is irrevocable and not appealable.

## **FAQS**

### ***June 2006: Probo Koala leaves Mediterranean***

#### **Where had the cargo on the Probo Koala come from?**

Three cargoes (totalling 84,989 metric tonnes) were delivered to the Probo Koala by ship-to-ship transfer in the Mediterranean. These cargoes consisted of coker naphtha, a gasoline blendstock which had been transported from Brownsville in the United States.

#### **Why did Trafigura need to mix cargoes?**

Gasoline that is produced by refineries rarely meets the specifications required by individual purchasers. These fuel specifications vary enormously around the world – ‘Super Unleaded’ gasoline in one country, for example, will be very different from that in another country. Refineries, terminals, traders and oil companies are always blending fuels and fuel stocks to get the exact specification set by the customer. It is a safe, everyday practice.

#### **Is Trafigura a toxic waste company?**

No. Trafigura is the world’s third largest independent oil trader and the second largest trader in the non-ferrous concentrates market. It has access to over US\$30billion in credit facilities from the world’s leading banks, and has billions invested in a variety of mining, downstream oil and logistics assets.

Trafigura is involved in every element of sourcing, storing and transporting crude oil, petroleum products, renewable energies, metals, metal ores and concentrates for industrial consumers. It handles over two million barrels of crude oil and oil products every day and over nine million tonnes of concentrates annually.

Trafigura employs staff in 44 countries around the world, with its principal corporate offices in Geneva and Lucerne.

#### **What are slops?**

A form of ships’ wastes generated during cargo operations; including tank drainings, cargo residues, tank washings and other oily mixtures.

#### **What was the composition of the slops of the Probo Koala and how were they produced?**

The cargoes of the Probo Koala contained higher than normal quantities of mercaptans. These substances, which exist in nearly all oils to some degree, emitted an unpleasant sulphurous smell. Cleaning, by using the caustic washing/Merox process, reduces the smell of the coker naphtha but does not actually remove the mercaptans themselves. Instead, they are converted into less smelly compounds called disulphides. It may seem a crude process but it is, in fact, simple chemistry that can be conducted using bulk quantities of fuel, caustic soda and a catalyst.

After this process, the cargo separates due to differences in relative densities into two layers with ‘cleaned’ coker naphtha at the top of the tank and slops or a mixture of water and spent caustic soda at the bottom.

### **What are mercaptans – and why were they treated anyway?**

Mercaptans are a commonly occurring substance found in nature and are a class of molecules containing sulphur, carbon and hydrogen. Mercaptans are commonly present in crude oil and also in refined oil products. They are, for example, produced in the human body during the digestion of foodstuffs such as beer and garlic.

Although gasoline containing higher levels of mercaptans is still perfectly usable, it would be unpopular with customers – so it must literally pass a ‘smell test’ before being accepted.

### **Is the caustic washing/Merox process unusual?**

No. It’s a well-known, legal and effective way of reducing impurities in gasoline blendstocks and has been used in the refining industry for 50 years. In 2006, there were 1,600 Merox units licensed for operation worldwide.

### **So how does it work?**

The caustic wash is achieved by adding caustic soda solution (sodium hydroxide) in one tank and circulating the contents around to ‘wash’ the coker naphtha and chemically extract the mercaptans from the hydrocarbons.

The Merox process requires an alkaline environment, which is provided by the caustic soda solution. In the presence of the alkaline water, mercaptans in the cargo are converted into mercaptides and they dissolve into the water. Here they interact with a catalyst, which aids the conversion from mercaptides to the much less strong smelling disulphides. The disulphides dissolve back into the cargo, while some mercaptides remain in the caustic water, which sinks to the bottom of the tank and is then pumped to the slops tanks.

### **Were the slops toxic?**

Toxicity is a matter of concentration and location. Lots of everyday things could be defined as toxic, such as after-shave. Even milk is considered toxic if released into an inappropriate environment.

The real issue here is: were the slops onboard the Probo Koala dangerous? No, they weren’t, they were no more or less dangerous than any other petroleum product. If they had been, the first individuals to be affected would have been the Probo Koala’s crew, those present at the discharge of the slops (the port authorities, tanker drivers and customs staff) and those directly involved in handling the slops during discharge operations. No ill effects were reported by any of these people.

### **It’s said that the slops contained two tonnes of the ‘toxic gas’ hydrogen sulphide?**

That is incorrect. The hydrogen sulphide allegations came from a misinterpretation by the BBC of a report carried out on samples of the slops out by the Netherlands Forensic Institute (NFI). The NFI Report found that the slops were highly alkaline which means that they could simply not have contained hydrogen sulphide in its molecular form. As stated by the NFI witness (FJM Bakker) in the Amsterdam criminal proceedings of 11<sup>th</sup> May 2010 the slops have ‘to be diluted millions of times before hydrogen sulphide is released, or you must add acid’.

The BBC, one of a number of media outlets that misunderstood the NFI data, has publicly acknowledged this fact and apologised for its error.

### **So where did this idea of hydrogen sulphide come from?**

The hydrogen sulphide allegations came in large part from a misinterpretation by the BBC and other media entities of a report carried out on samples of the slops out by the Netherlands Forensic Institute (NFI).

In the course of testing for composition, the NFI acidified a part of the sample to a pH of 1. Under those extremely acidic conditions, conversion of the sulphides and bisulphides can occur, thereby creating and releasing hydrogen sulphide.

The NFI Report stated that the slops registered a pH of 14, a reading that was extremely alkaline. Crucially, there is no evidence to suggest that conditions at any of the Abidjan dump sites were sufficiently acidic to effect a change in the slops that would mean that the slops would generate hydrogen sulphide to such an extent that they could have caused harm to human health as alleged.

### **I've heard people say the process you used was illegal. Was it?**

No. It is not illegal or banned. It wasn't illegal or banned then. It isn't now.

## ***July 2006: Probo Koala in Amsterdam***

### **What regulations govern ship waste and what are the responsibilities of various parties involved?**

The handling of ship generated waste, including slops, is regulated by the international convention MARPOL 73/78, which is the International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978. ('MARPOL' is short for 'marine pollution' and 73/78 short for the years 1973 and 1978).

MARPOL 73/78 is one of the most important international marine environmental conventions and it was designed 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 minimisation of accidental discharge of such substances'.

The original MARPOL Convention was signed on 17<sup>th</sup> February 1973, but did not come into force. The current Convention is a combination of the 1973 Convention and the 1978 Protocol. It entered into force on 2<sup>nd</sup> October 1983. As of 30<sup>th</sup> September 2007, 145 countries, representing an estimated 98.34% of the world's shipping tonnage, were parties to MARPOL 73/78 (Annex I/II). These countries include The Netherlands and the Ivory Coast. In 2011 this figure had reached 150 countries and more than 99% of the world's shipping tonnage.

Under the MARPOL Convention, each state has the obligation to ensure that it has the necessary facilities to handle ships' waste efficiently and safely and each vessel has to maintain an oil log book detailing movements in its oil cargoes.



### **What volume of slops was removed by Amsterdam Port Services (APS)?**

About 350 cubic metres were discharged to an APS barge between 8pm and 12am on Sunday 2<sup>nd</sup> July 2006.

### **Why did the slops removal company APS hike up its price to such an extent?**

APS revised its charges on 3<sup>rd</sup> July 2006. No credible explanation was ever given. APS's claim about the increased Chemical Oxygen Demand of the slops was irrelevant, and besides it was not substantiated by any test results and was therefore considered completely unreasonable. Fees charged by licensed operators who receive, and in some cases pay for, slops vary from port to port and negotiations often take place.

### ***August 2006: Probo Koala from Lagos to Abidjan***

#### **Why was the vessel then sent to Abidjan to discharge slops?**

It wasn't. You don't send a 37,000-tonne / 51,610 cubic meter capacity vessel halfway round the world just to discharge around 528 cubic meters of slops (1.02% of the Probo Koala's total capacity). The Probo Koala went to Paldiski, Estonia to load gasoline for a commercial delivery to Lagos, Nigeria. While in Lagos, Trafigura looked to see if the slops could be discharged but offers made by two local operators to do the work were rejected by Trafigura as the disposal methods were not considered appropriate. So the vessel departed en route back to Paldiski to collect another cargo. On the way it was decided to take the vessel into Abidjan to discharge the slops.

#### **Was Abidjan equipped to treat such slops?**

Yes. Under Regulation 38 of the MARPOL Convention, to which Ivory Coast was a signatory, slops handling would be standard practice at a major oil port like Abidjan. Indeed, Abidjan is one of the largest and most sophisticated ports in west Africa: in 2006, the port handled a total of 18 million tonnes of goods. It has handled oil-related cargoes since 1965; in addition to the SIR oil refinery (which has an operating capacity of approximately 22 million barrels of crude oil per annum), there is a separate bitumen plant run by SMB. The Ivory Coast is also a crude oil exporting country. Trafigura, as well as other major oil companies, such as Shell and Total, have been operating in the Ivory Coast for decades. Consequently, the port was 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.

### ***August 2006: Probo Koala in Abidjan***

#### **How was Compagnie Tommy selected as operator responsible for handling the slops?**

As is standard industry practice, a reputable and established local shipping agent was used to identify a suitable licensed operator to offload the slops. The shipping agent, WAIBS, had acted for oil traders for 11 years in a responsible and reliable manner and had previously acted on behalf of Trafigura for over four years. The shipping agent recommended Compagnie Tommy.

Furthermore, as part of its due diligence, Trafigura ensured that Compagnie Tommy provided to Trafigura copies of its appropriate governmental and port licences to handle the slops as well as sought confirmation from the port authorities that such licences were valid.

**Is it true that Compagnie Tommy was set up to deal with the Probo Koala's slops after Amsterdam?**

No. Trafigura had no links whatsoever with Compagnie Tommy. Compagnie Tommy had been incorporated and had applied for its legal permits months before Trafigura decided to discharge the slops in Abidjan (and indeed before the Probo Koala had even called at Amsterdam). Compagnie Tommy was recommended by WAIBS, a long-established and reputable shipping agent. Trafigura then carried out its own independent checks on Compagnie Tommy and with the port authority and everything seemed to be in order.

**It was reported that Compagnie Tommy said it wasn't aware of what the slops contained.**

That is wrong. Prior to the arrival of the Probo Koala, Trafigura notified Compagnie Tommy and the relevant authorities in Abidjan as to the nature of the slops.

**What did Compagnie Tommy do with the Probo Koala's slops?**

Compagnie Tommy dumped the untreated slops at sites in and around Abidjan. Its conduct was utterly reprehensible and illegal. Furthermore, it was a flagrant breach of Compagnie Tommy's licence.

**Were Trafigura's trading procedures deficient at the time of the incident?**

No. As mentioned in his independent inquiry into the Probo Koala incident, Lord Fraser said: 'I am not aware of any substantial departure by Trafigura from what is good trading practice [i.e. comparable to other 'oil majors'] and no 'whistleblower' has contacted me to suggest the contrary.'

Trafigura follows international laws, standards, rules and regulations for the management of its trading and shipping operations and did so for the voyages of the Probo Koala. Sadly, a contractor decided to dump the slops illegally despite Trafigura following these practices.

**Are the Probo Koala's slops still causing health problems in the Ivory Coast?**

No.

Burgeap, a leading environmental consultancy, appointed by both Trafigura and the Ivorian Government to undertake an audit of the reported dump sites noted that no further remediation was required by EU standards. Burgeap could not at the time rule out the potential for some odour issues in future.

While satisfied by Burgeap's conclusion, Trafigura commissioned WSP Environment & Energy, a leading global environmental consultancy, to consider whether further, later, rumours of residual contaminants associated with the slops remained at alleged disposal sites. During the course of its investigations, WSP confirmed that at the dump sites investigated they did not find any compounds that could have originated from the slops and concluded that there was no current related risk to human health from the slops. These findings, together with those reached by Burgeap, the UN Disaster Assessment and Coordination (UNDAC) mission and other independent parties clearly disprove any suggestion that the slops from the Probo Koala continue to pose a threat to the health of the local population in and around Abidjan. As reported by UNDAC:

'It is believed that three weeks after the dumping of the waste the concentrations of the concerned compounds in the air are low and no further adverse health effects are to be expected. However the chemicals, especially mercaptans have strong smells at low concentrations [and are] detectable by the human nose at concentrations far below danger levels. This may give a false impression of toxicity.'

### **What measures have been taken to ensure such an event won't happen again?**

From an internal procedure point of view, Trafigura continues to ensure that slops are only discharged in the hands of licensed operators. Nevertheless, international regulations are such that there is limited scope for a ship operator to a) select the port in which it calls to discharge slops and b) retain control over what happens to the slops once they are discharged into the hands of a licensed operator. This is why Trafigura is very active in assisting the industry and ensuring that such matters are adequately implemented at national and local levels.

### **There was an allegation that Trafigura met Abidjan port personnel in Paris in May 2006, before the Probo Koala went to the Ivory Coast. Is that true?**

The allegation was one of impropriety and it is absurd.

First, Trafigura and its subsidiaries are major investors in Abidjan and the port. It is inevitable that there are business meetings with the relevant authorities.

Second, if – as was implied – Trafigura had been planning in May to discharge the slops in Abidjan then why would the company have gone to the substantial cost and effort of sending the Probo Koala into Amsterdam in July?

### ***September 2006: Arrival and arrest of Trafigura team***

#### **What did Trafigura do upon becoming aware of the incident?**

On 14<sup>th</sup> September, Trafigura sent its own team to Abidjan to offer technical, medical and financial assistance to the investigation. While Trafigura could not have foreseen the disgraceful actions of Compagnie Tommy, it was deeply concerned on hearing the reports coming out of Abidjan.

The Trafigura delegation went to Abidjan in good faith to help deal with the emergency. It included two executives, Claude Dauphin (Trafigura's Chairman) and Jean-Pierre Valentini (a senior manager of the company), Captain N'Zi Kablan (Trafigura's local manager of Puma Energy CI, Trafigura's subsidiary company in Abidjan), a team of doctors, a geologist and a refining engineer.

#### **What steps did Trafigura take to secure the release of its executives?**

Trafigura immediately began discussions to secure the release of its executives, including direct discussions with the Ivorian Government as well as diplomatic proceedings. The executives were released in February 2007.

## ***September 2006: Trafigura commissions the draft Minton Report***

### **What was the draft Minton report?**

On 7<sup>th</sup> September 2006, Trafigura commissioned Minton, Treharne & Davies Ltd (Minton) to prepare a document, based on purely theoretical information, on what may have happened in Abidjan. This was later to become known as the 'Minton Report'.

In fact, the Minton Report was never finalised as its contents were importantly superseded within a matter of days by comprehensive analyses of the actual slops. This analysis was carried out by the Netherlands Forensic Institute (NFI), based on the samples taken by the District Environmental Police (DEP) in Amsterdam.

### **Why did the draft Minton Report later attract so much attention?**

Principally because a question was asked in the UK's parliament about the injunction granted to Trafigura to prevent publication of the draft Minton Report. The question led to elements of the media falsely suggesting that Trafigura had improperly attempted to prevent the media reporting on the Parliamentary Question. Some media even made the equally ludicrous suggestion that Trafigura had attempted to prevent Parliament even debating the matter, and it also led to the content and significance of the draft Minton Report itself being misinterpreted and wildly misrepresented .

### **So why did Trafigura use Minton then if its report was not of use?**

It's not that the report was 'not of use'. Trafigura asked Minton for an informed preliminary idea of what the slops *might* have contained – and that's exactly what it provided. The hypotheses became redundant when the real samples were analysed by the Netherlands Forensic Institute (NFI) and the facts became known a matter of days after the draft Minton Report was submitted. Minton was, and remains, a world-class scientific consultancy, with which Trafigura and numerous others in the industry continue to consult.

### **Didn't the draft Minton Report show that Trafigura had covered up the toxic waste problem?**

No it did not. The illegal disposal of the slops by Compagnie Tommy in Abidjan was public knowledge around the world within weeks of the original incident. Similarly, it was also public knowledge that Compagnie Tommy had been contracted by Trafigura. Trafigura has never attempted to cover this up.

The draft Minton Report was commissioned because Trafigura wanted to know what might have happened in Abidjan as a result of the slops being dumped in open areas.

It was a report based on hypotheses alone.

### **Why did you try to keep the draft Minton Report secret?**

The report was a confidential and legally privileged draft, it was based on hypothetical data and furthermore it incorporated statements that could have been potentially misleading to an uninformed reader.

Trafigura was concerned that the information would be misreported, misinterpreted and consequently misunderstood. Indeed, media reporting of this particular issue has done exactly that. Regrettably, the majority of the media coverage mentioning the draft Minton Report has been inaccurate and in many cases, far from the truth.

As it quickly transpired, the draft Minton Report (and the need for it) was superseded by the publication of the NFI report which was independent and based on analysis of the actual slops.

### ***September 2006: Probo Koala detained in Paldiski***

#### **Why does Greenpeace keep appearing in the Probo Koala story?**

Greenpeace (Netherlands) specifically chose the issue as the focus of one of its campaigns. Ever since the Probo Koala incident began, it made a series of unfounded accusations concerning Trafigura and its business activities. Time and time again, these allegations have been found to be totally baseless but, sadly, they have been given credibility by some journalists.

Trafigura favours a policy of constructive engagement with members of the Non-Governmental Organisation (NGO) community and will always seek to address societal concerns in a manner that is both transparent and befitting of a world leading business.

### ***November 2006: Trafigura appoints Rt. Hon The Lord Fraser of Carmyllie to chair Probo Koala Inquiry***

#### **If Trafigura paid Lord Fraser to write the report how could the report be described as independent?**

Lord Fraser was highly qualified for such a task and furthermore accepted without reservation the original terms of reference which were weighted heavily by Trafigura in favour of promoting independence. Lord Fraser replied to the request for assistance with the following:

‘...I only add that as one who has conducted inquiries on behalf of Government in the UK and others that I am much impressed with both the transparency and the independence allowed to me. Had Trafigura sought to constrain me, I would have declined the Terms. Without prejudging my conclusions I hope that what I shall be reporting to Trafigura will influence international thinking.’

### ***November 2006: Leigh Day & Co initiates High Court group action***

#### **Why was Leigh Day & Co claiming against Trafigura when it was Compagnie Tommy who dumped the slops?**

It was Compagnie Tommy, a local independent contractor engaged by Trafigura, and not Trafigura itself which unlawfully and reprehensibly dumped the slops in and around Abidjan.

However, Trafigura believes that the claims were brought against Trafigura and not Compagnie Tommy as it allowed them to be brought by Leigh Day & Co in the English courts and because Trafigura has deeper pockets.

## ***January 2007: NFI publishes report***

### **Did your slops kill people?**

No. Scientific analyses of the slops by totally independent agencies, specialists, scientists and doctors have shown that the slops could only, at worst, have caused a range of short term low-level flu like symptoms and anxiety.

### **But wasn't one of the people convicted of manslaughter in Ivory Coast?**

Salomon Ugborugbo, the owner of Compagnie Tommy, was indeed convicted of manslaughter in connection with the Probo Koala incident. However, Trafigura does not know the basis upon which the court reached its decision. The company was not a party to the case and therefore had no access to the evidence.

Trafigura maintains that there is no basis to support any allegation that the slops could have caused anything other than short term low-level flu-like symptoms and anxiety, and this is supported by the work of the 20 independent experts who submitted evidence to the English group action case.

### **Why is the NFI Report so significant?**

First, it is significant because the Netherlands Forensic Institute is independent. It is a part of the Dutch Ministry of Justice and Security.

Second, the analysis was performed on samples from the actual slops themselves.

Third, it was acknowledged in the English court proceedings as the best evidence available as to the composition of the slops.

### **How does that leave the issue of all the people who undoubtedly did seek medical aid at the time?**

Whatever health issues they had, the slops could not have caused anything worse than short-term flu like symptoms and anxiety. Crucially, those closest to the slops – the people handling the cargo and the slops on the ship and in the various ports – did not suffer any illness or injury.

There was, at the time, a large degree of misinformation from the local Ivorian press that led to unnecessary health concerns (indeed, at one point it was suggested, ludicrously, that the slops were 'radioactive') and that some people in Abidjan apparently misattributed unrelated symptoms to the dumping of the slops. The smell of the slops too could have given a false sense of toxicity, as UNDAC specifically recognised.

It is understood that in response to heightened concerns among the public, a number of hospitals in Abidjan offered local inhabitants free medical care. While undoubtedly this decision would have aided and reassured members of the public it is also believed that the move led to hospitals being flooded by those seeking medical care for a range of pre-existing illnesses that were completely unrelated to the slops.

**So the slops couldn't have caused deaths, miscarriages and serious illnesses. Didn't they did contain chemicals that caused a range of skin diseases?**

There is no truth in that either. Dermatological conditions such as psoriasis, eczema and vitiligo could not have been caused or made worse by any alleged exposure to the slops.

***February 2007: Agreement between Trafigura and the Ivorian Government***

**How has Trafigura's trading with the Ivory Coast been affected?**

It hasn't. Trafigura continued to trade with the Ivory Coast before, during and after the event.

While abiding for example, by recently imposed EU sanctions, Trafigura has traded significant volumes with the Ivory Coast in recent years, delivering crude and fuel products and off-taking products and local crude. More generally, Trafigura plays a vital role in delivering oil cargoes to west Africa.

Trafigura and its subsidiary companies have invested millions of dollars in infrastructure and facilities in the port of Abidjan and the Ivory Coast. It was – and remains – an important business centre for Trafigura.

***June 2008: Charges brought against Trafigura in Amsterdam***

**Did Trafigura contravene Basel Convention regulations in Amsterdam?**

No. Trafigura did not.

If slops are shipped from one country to another (a trans-boundary shipment), then the carriage and disposal of the waste is in principle regulated by the Basel Convention.

However, if waste is produced on a ship, the disposal of that waste is excluded from the Basel regime and is regulated by MARPOL regulations.

The slops on the Probo Koala were produced by an operation at sea and were therefore subject to MARPOL regulations, not the Basel Convention.

Unfortunately the Amsterdam Court ruled that Trafigura did contravene the Basel Convention in Amsterdam. Trafigura has appealed the judgment.

***October 2008: Head of Compagnie Tommy convicted***

**Wasn't Trafigura's subsidiary Puma Energy involved in the Abidjan trial? Didn't its manager leave the Ivory Coast before he was due to appear as a witness?**

Puma Energy CI assisted with checking Compagnie Tommy's credentials prior to the arrival of the Probo Koala. Its local manager was placed on a witness list for the Abidjan trial but he was never actually called and, during the trial, the prosecutor declared that he did not require him.

### ***July 2009: WSP publishes independent report***

#### **What was the point of the WSP Report? Why bother producing it so long afterwards?**

There are still claims that the remains of the slops are present and causing harm to human health in the Ivory Coast.

Trafigura commissioned international environmental consultancy WSP to undertake further investigations in order to ascertain the truth. It concluded that a) there is no risk to human health from contaminants specifically relating to slops at the dump sites tested and b) a number of environmental issues not related to the slops were identified at some of the alleged dump sites, as well as other sites suggesting historical contamination associated with other processes and/or activities.

### ***September 2009: UN publishes report***

#### **But the UN is a world-renowned and trusted entity – surely one of its organisations wouldn't produce an inaccurate report?**

Trafigura holds the valuable work carried out by the UN and the UN's Human Rights Council (UNHRC) in the highest regard.

However, the report was not produced by the UN or one of its organisations. Professor Ibeanu was merely a Special Rapporteur to the UN and was commissioned to assess the situation and write the report.

Trafigura welcomed the prospect of an independent report on the situation and offered Professor Ibeanu its full assistance, cooperation and extensive access to properly sourced information.

However, in the event, Professor Ibeanu spent very little time in Ivory Coast and commissioned no independent scientific research of his own. His report relied almost exclusively upon anecdote and rumour in place of verifiable facts.

### ***September 2009: Trafigura vindicated in the English High Court***

#### **Why did Trafigura agree to a settlement with Leigh Day & Co and its claimants, given it does not admit liability?**

As long as it was being suggested by the claimant's lawyers that Trafigura's actions had caused deaths, miscarriages and serious and long-term injuries, Trafigura was determined to go to trial to vindicate its position. However, Leigh Day & Co finally acknowledged the reports of independent scientific experts and doctors showing that the serious and long-term injuries they had alleged simply could not have been caused by the slops.

Once it was demonstrated and accepted by Leigh Day & Co that the slops could, at worst, only have caused 'low level flu-like symptoms and anxiety' the decision to settle was consistent with Trafigura's approach since the beginning to recognise what it believed to be a responsibility to the region and its people regardless of any legal liability.



On another level it was also important to draw a line under this event for all involved and once the scientific case clearly established the facts, it made sense to complete the procedure as soon as practicable.

**But Trafigura paid £30 million. Surely you admit there were serious injuries from the incident?**

No. Trafigura agreed to pay £950 to each claimant. The claimants' lawyers had claimed £5,000 or more for each person, totalling about £180 million. That £950 is an appropriate sum for those who may have suffered short-term, low-level symptoms or anxiety. In England, for example, compensation for a minor whiplash injury typically is around £850 to £2,750. By agreeing to pay £950 per claimant, Trafigura did not admit any liability. The settlement was a sensible resolution to avoid additional expensive and time-consuming legal costs.

**So, if Trafigura agreed a settlement, why was the court involved?**

It is mandatory in the UK for a settlement involving children to be endorsed by the High Court. It is also the reason that the endorsement hearing had to be held in private.

**Once the proceedings in the Group Legal Action brought by Leigh Day & Co concluded why did you not publish the experts' reports?**

The independent experts' reports are not scientific papers in the academic sense (i.e. not available for broad publication). The reports were highly detailed, are thousands of pages long and, more importantly, were specifically prepared as forensic evidence with regard to cases concerning private individuals, including children.

***May 2010: Leigh Day & Co's legal bill disclosed for Trafigura case***

**And what about the Ivorian claimants? I've read that they haven't received the money paid to Leigh Day & Co by Trafigura.**

Trafigura understands that, as of 1<sup>st</sup> May 2011, many thousands of those entitled to payment from the September 2009 settlement have not been paid.

The company is saddened by this but feels it is a reflection of how Leigh Day & Co has operated from the outset. One can only assume that Leigh Day & Co is vigorously working to get all its clients their £950 entitlement as it is in managing its claims for £105 million in costs.

Trafigura must stress that it paid the settlement sum in full on the day the settlement was agreed in September 2009. Leigh Day & Co has the responsibility for distributing that to its clients. Any specific questions as to the current status of payments can only be answered by Leigh Day & Co.

***May 2010: Greenpeace, the Dutch media and the bribery allegations***

**If the claims are so misleading, why hasn't Trafigura sued the Dutch media?**

The Probo Koala incident has attracted considerable press coverage in the Netherlands, where certain elements of the media have appeared to have little interest in balanced or responsible reporting.

Trafigura has formerly challenged such reporting and will continue to do so where necessary. Ultimately however Trafigura aspires to engage positively with the media to avoid emotive stories such as these being misrepresented.

From a legal perspective, Dutch libel laws differ from those in the UK in that the media are given far more leeway to publish inaccurate and defamatory allegations on matters they say are of 'public interest', regardless of their accuracy and without having to ensure anywhere near as much balance and fairness as under UK law. Therefore litigation is unlikely to be the most effective response for Trafigura to take in relation to inaccurate coverage. Trafigura continues to believe that there is no public interest in the publication of inaccurate material.

### **Why is Trafigura so litigious?**

It isn't.

Trafigura has taken specific legal action in libel on only two occasions when the inaccuracies have been particularly outrageous. Trafigura has won both the defamation claims it has brought – against the BBC and Leigh Day & Co. The company has also obtained unreserved apologies from other media, including The Guardian and The Times, without pursuing them in the courts.

The only other media-related legal action taken by Trafigura was the so-called 'super-injunction' against The Guardian but that was a breach of confidence action, not a defamation action.

### **Greenpeace and others have frequently suggested that Trafigura has bullied journalists. Is this true?**

No. This is an absurd suggestion. Trafigura will however seek to defend its name where inappropriate or inaccurate statements are made that could mislead the public. Trafigura continues to believe that there is no public interest in the publication of inaccurate material.

### ***July 2010: Trafigura acquitted of one charge but liable on two other charges in Amsterdam***

#### **Why did Trafigura think the judgment was 'fundamentally flawed'?**

Trafigura maintains that the court put forward a wildly divergent interpretation of the applicable international conventions, EU and Dutch law. The company's lawyers advised that there are clear grounds for appeal, particularly in how the court interpreted the scope and provisions of the old European Waste Shipment Regulation (259/93/EC) and with its failure to examine the usual application of the MARPOL Convention and EU Port Reception Facilities Directive to the slops material.

## Glossary

**Abidjan** – port city and commercial capital of the Ivory Coast. The former official capital of the Ivory Coast, Abidjan is the country's largest city and the fourth largest French-speaking city in the world (after Paris, Kinshasa and Montreal). Highly industrialised and regarded as the cultural centre of west Africa, Abidjan is located in Ébrié Lagoon on several converging peninsulas and islands, connected by bridges. The city is composed of two parts (northern and southern Abidjan) and divided into ten communes. In 2006, the city had an estimated population of 3,796,677. As well as its oil refinery, major industries include food processing and the manufacture of textiles, chemicals and soap.

**Akouédo** – village on the outskirts of central Abidjan. Akouédo houses an official dump-site that was utilised by Compagnie Tommy to offload a significant volume of slops from the Probo Koala.

**Amsterdam Port Services BV (APS)** – company licensed by the Dutch authorities to handle ships waste, and contracted by Trafigura to take slops from the Probo Koala.

**AVR-Industrial Waste BV (AVR)** – Dutch company instructed by APS to analyse samples of the Probo Koala slops in Amsterdam.

**Basel Convention** – the Basel Convention is the most comprehensive global environmental treaty on hazardous wastes. It has 172 member countries and its aims are the reduction of the trans-boundary movements of hazardous wastes, the prevention and minimization of their generation, the environmentally sound management of such wastes and the active promotion of the transfer and use of cleaner technologies. The Convention was opened for signature on 22<sup>nd</sup> March 1989, and entered into force on 5<sup>th</sup> May 1992. A waste falls under the scope of the Convention if it is listed within the category of wastes listed in Annex I of the Convention and exhibits one of the hazardous characteristics contained in Annex III (i.e. by being explosive, flammable, toxic, or corrosive). It can also fall under the scope of the Convention if it is defined as or considered to be a hazardous waste under the laws of either the exporting country, the importing country, or and of the countries of transit.

**Burgeap Côte d'Ivoire** – environmental specialist and subsidiary of the European Engineering Group BURGEAP IGIP Holding SE, Burgeap Côte d'Ivoire carries out research and engineering projects including audits, consulting, measurement, training, project management, technical support and turnkey projects in various fields of the environment. Often working on behalf of the Ivorian Ministry of Environment, it was appointed to undertake an audit of the dump sites in Abidjan after an agreement between Trafigura and the Ivorian Government.

**Catalyst** – a substance that speeds up a chemical reaction, in this case the Merox process.

**Caustic soda** – also called sodium hydroxide, the chemical used in the caustic washing process. Caustic soda is one of the most widely used chemicals both in industry and in the home. Caustic soda is mixed with other chemicals and, together with water, can dissolve grease, oil and fat. It is widely used in industry for a diverse number of applications including paper manufacturing, oil drilling, food preparation and aluminium production.

**Caustic washing/Merox process** – a well-known, legal and effective way of reducing impurities from gasoline blendstocks. The caustic wash is achieved by adding caustic soda solution (sodium hydroxide) to the ship's tanks and circulating the contents to 'wash' the coker naphtha and chemically extract the mercaptans from the hydrocarbons.

**The Merox Process** - Merox is an acronym for mercaptan oxidation. After the caustic washing, a catalyst is added to facilitate the oxidation of mercaptides to chemical compounds called disulphides. These organic compounds, which are far less odorous than the mercaptans, dissolve back into the naphtha. The caustic solution containing the catalyst, traces of the mercaptides and other water soluble salts is then drained from the bottom of the tank.

**Chemical Oxygen Demand (COD)** – the standard method for indirect measurement of the amount of pollution in a sample of water. The COD test procedure is based on the chemical decomposition of organic and inorganic contaminants, dissolved or suspended in water. The result of a COD test indicates the amount of water-dissolved oxygen consumed by the contaminants during two hours of decomposition from a solution of boiling potassium dichromate. The higher the COD, the higher the amount of pollution in the test sample.

**Coker naphtha** – produced from the processing of heavier residues of crude oil. This processing, which is common within the oil industry, is known as thermal cracking ('coking') – hence the name 'coker' naphtha. These products are traded worldwide. Coker naphtha was part of the Probo Koala's cargo.

**Communauté Financière Africaine (CFA) franc** – official currency of the Ivory Coast.

**Compagnie Tommy** – the firm that, having been appointed by Trafigura to treat the Probo Koala slops safely and legally, reprehensibly dumped the slops material in and around Abidjan.

**District Environmental Police (DEP)** – Dutch police department that took samples of the slops from the Probo Koala. It was these samples that were used by the Netherlands Forensic Institute (NFI) in their authoritative Report. The results regarding the composition of the slops showed the slops could not have caused the injuries alleged to the people of Abidjan.

**Fujairah** – port in United Arab Emirates where the Probo Koala completed its delivery of liquid cargo – and its tanks were cleaned and analysed.

**Gasoline blendstock** – gasoline to be blended with other materials to meet a particular specification. Each country has its own specifications for different types of gasolines and fuels, and it is often necessary to blend different fuels (feedstocks) to create a product that meets the local requirements. This is a process carried out in terminals and on ships around the world every day.

**Hydrocarbons** – organic compounds, naturally found in crude oil, containing only hydrogen and carbon.

**Hydrogen sulphide** – highly toxic gas that was shown to have been categorically not present in the Probo Koala slops.

**International Maritime Organisation (IMO)** – established in Geneva in 1948 (though now headquartered in London), the IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping. Its remit covers a broad range of areas including safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. It is a specialised agency of the United Nations with 169 Member States and three Associate Members. In 1973, IMO adopted the International Convention for the Prevention of

Pollution from Ships (MARPOL), which has been amended by the Protocols of 1978 and 1997 and kept updated with relevant amendments.

**Leigh Day & Co** – the lawyers retained on behalf of residents of the Ivory Coast who claimed to have suffered serious injuries as a result of exposure to the Probo Koala slops. Leigh Day & Co initiated group action proceedings in the English High Court against Trafigura. In September 2009 a settlement was reached, as a result of independent expert evidence and Leigh Day & Co acknowledged in an Agreed Joint Statement that the slops could at worst have caused low-level flu like symptoms and anxiety.

**Main VII** – a tank barge assigned to take the slops from the Probo Koala in Amsterdam harbour.

**MARPOL** – also known as MARPOL 73/78, it is the International Convention for the Prevention of Pollution From Ships. MARPOL 73/78 is one of the most important international marine environmental conventions. It was designed to minimise pollution of the seas, including dumping, 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.

It entered into force on 2<sup>nd</sup> October 1983. As of 31<sup>st</sup> December 2005, 136 countries, representing 98% of the world's shipping tonnage, are parties to the Convention. In 2011 this figure had reached 150 countries and more than 99% of the world's shipping tonnage.

All ships flagged under countries that are signatories to MARPOL are subject to its requirements, regardless of where they sail, and member nations are responsible for vessels registered under their respective nationalities.

**Mercaptans** – in organic chemistry, a mercaptan is an organosulphur compound. Many mercaptans have strong odours. They are used as flavouring in food and also as odourants to assist in the detection of natural gas (which in pure form is odourless), and the 'smell of natural gas' is in fact due to the smell of the mercaptan used as the odourant. Mercaptans are commonly present in crude oil and refined oil products.

**Mercaptides** – water soluble salts of mercaptans created in an alkaline environment during the caustic washing/Merox process.

**Minton, Treharne & Davies (Minton)** – the world-renowned scientific consultancy that was commissioned by Trafigura to prepare a generic, desktop study of the potential chemicals in the slops, without any access to data or analyses of the actual samples. The unfinished document, which was stolen and sent to The Guardian newspaper, became known as the Minton Report.

**Netherlands Forensic Institute (NFI)** – actually called the Nederlands Forensisch Instituut, it is an agency of the Netherlands Ministry of Security and Justice. The NFI produced the authoritative report on the composition of the slops, having analysed the samples taken from the Probo Koala in Amsterdam. The results showed that the slops did not contain the harmful impurities alleged.

**Operation Clean City** – three-month initiative, sponsored by the World Bank, which helped to dispose of 500,000 tonnes of waste from Abidjan in 2009.

**Ore Bulk Oil (OBO) carrier** – also known as a combination carrier, a type of vessel designed to carry liquid or dry cargoes. The Probo Koala was an OBO carrier, which also meant it had the required tank coating to allow it to perform caustic washing operations.

**Paldiski** – Estonian port that was on the Probo Koala’s scheduled commercial route.

**Petroci Jetty** – jetty at SIR Refinery, used by the Probo Koala on arrival in Abidjan.

**Puma Energy CI** – Puma Energy Côte D’Ivoire, a wholly owned subsidiary oil company of Trafigura.

**Societe Ivoirienne de Raffinage (SIR)** – oil refinery in Vridi, Abidjan.

**Slops** – A form of ships’ wastes generated during cargo operations; including tank drainings, cargo residues, tank washings and other oily mixtures.

**Special Rapporteur** – a title given to individuals working on behalf of the United Nations within the scope of ‘Special Procedures’ mechanisms who bear a specific mandate from the United Nations Human Rights Council.

**Tank barge** – barge equipped with tanks to carry liquid cargoes.

**TREDI** – a business unit of the French group Séché Environnement, and a key player in the European integrated hazardous waste management market. TREDI was appointed by the Ivorian Government to remediate the waste in Abidjan on 17<sup>th</sup> September 2006. Samples were drawn from recovered soils and liquids and analyses (carried out between October 2006 and January 2007) were submitted for authorisation for the waste to be removed, containerised and shipped to France for incineration.

**United Nations Disaster Assessment at Coordination (UNDAC)** – part of the UN’s international emergency response system for sudden-onset emergencies. It sent a team to Abidjan, following the dumping of the slops, and produced an early report on the situation.

**United Nations Human Rights Council (UNHRC)** – inter-governmental body within the UN made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. Its Special Rapporteur, Professor Okechukwu Ibeanu, produced a controversial and poorly researched document on the dumping of the Probo Koala’s slops and their alleged effects on the local population.

**WAIBS** – shipping agent in Abidjan that recommended Compagnie Tommy to treat the slops.

**World Health Organisation (WHO)** – directing and coordinating authority for health within the United Nations system. It was one of the first organisations to arrive in Abidjan when reports emerged of the dumping of the slops.

**WSP Environment & Energy (WSP)** – a wholly owned subsidiary of WSP Group plc, an engineering consultancy listed on the London Stock Exchange since 1987. WSP Group has more than 10,000 staff working from offices in 35 countries located in Europe, Africa, the Middle East, Asia and the Americas. Its Soil & Groundwater Contamination practice has over 300 staff in the UK and extensive experience of examining contaminated sites. Trafigura commissioned WSP to conduct an independent assessment of the suspected dumping locations in and around Abidjan.