

**B E T W E E N : -**

**TRAFIGURA LIMITED**

**Claimant**

**and**

**BRITISH BROADCASTING CORPORATION**

**Defendant**

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**SUMMARY OF REPLY PURSUANT TO CPR 16 PD 1.4**

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1. In its Reply, Trafigura disputes the BBC's case on meaning, which Trafigura submits is unsustainable.
2. The Reply sets out fully Trafigura's case that none of the chemical constituents of the Slops can have been released in quantities and in a manner sufficient to cause any toxicological injury.
3. By contrast, the case advanced by the BBC concerning the alleged health consequences of the dumping (including the BBC's allegations of deaths and miscarriages) is largely unparticularised. However, insofar as it is possible to discern, the BBC's case appears in large part to be dependent on the premise that the *Probo Koala* Slops contained large quantities of hydrogen sulphide, which was then released in lethally dangerous concentrations.

### **Hydrogen Sulphide**

4. In support of the allegation that the Slops contained hydrogen sulphide, the BBC relies on an analysis of the composition of the Slops by the Nederlands Forensisch Instituut ("NFI"). However, the BBC's allegations – both in their Defence and in the broadcast complained of - are based on a fundamentally flawed reading of that analysis.
5. The NFI analysis (which Trafigura agrees is the best available evidence of the composition of the Slops) states that the Slops were highly alkaline, with a pH of 14. At such an alkalinity the Slops simply could not have contained hydrogen sulphide in its molecular form. Hydrogen sulphide could only have been released from the Slops following the addition of large quantities of concentrated acid. There is no evidence whatsoever of any such significant acidification event. On the contrary, contemporaneous testing in Abidjan

showed that the Slops remained alkaline during the relevant period. There was therefore no question of any release of hydrogen sulphide at levels posing any harm to human health.

### **Alleged Deaths**

6. The BBC in its Defence alleges that sixteen individuals were killed by exposure to the Slops. In relation to four of those individuals, no particulars are given which could support a conclusion that their deaths were caused by exposure to the Slops.
7. In relation to the other twelve individuals, the only particulars relied on are purported post mortem test results, which are said to show the presence of hydrogen sulphide in samples taken from the bodies of the individuals. However, those test results, even if accurate, provide no support for the allegation that the cause of any of the deaths in question was hydrogen sulphide poisoning. The tests were carried out several months after death, when the bodies were in a state of decomposition. Decomposition produces hydrogen sulphide. The BBC have put forward no other particulars to support any conclusion that the individuals in question died as a result of exposure to hydrogen sulphide.
8. Even if the deaths referred to above *were* caused by hydrogen sulphide (and there is no proper evidence that they were), then it cannot have come from the Slops. The evidence-based approach set out in the Reply and summarised below demonstrates that hydrogen sulphide simply could not have been released from the Slops in harmful (let alone lethal) quantities.
9. The parties were agreed in the Group Litigation that the Slops could not have caused deaths, and indeed the solicitors for the claimants in the Group Litigation have withdrawn their earlier allegation to that effect.
10. Despite alleging in the broadcast complained of that the Slops had killed a 16 month-old child (Ama-Grace Kouadio), the BBC does not seek to justify this allegation, despite the fact that it is still being published on the BBC website.

### **Alleged Miscarriages/Intra-Uterine Deaths**

11. No particulars are given by the BBC to support their assertion that the intra-uterine deaths alleged to have been suffered by the two women named in the Defence were caused by exposure to the Slops.

12. As set out in the Reply, vapours from the Slops were simply not sufficient to cause toxicological injuries, let alone miscarriages or intra-uterine deaths as the BBC allege.
13. The chronology and sequence of events stated by the BBC in the Defence in relation to the two women in question, even if established, does not support, or even lend any credence to, the conclusion that the deaths of their babies were caused by exposure to the Slops, rather than any of the many other potential causes of intra-uterine death.

### **Alleged Serious/Chronic injuries**

14. The BBC does not name a single individual whom it alleges suffered a serious or chronic injury. It does not attempt to justify the allegation that the injuries of the severely disfigured woman whose photograph illustrated (and continues to illustrate) the Article complained of was injured by exposure to the Slops. The BBC relies for its case on serious and chronic injuries on a single epidemiological study which is, on its face, completely inadequate to justify the allegations made.

### **The Evidence-Based approach**

15. The Reply provides an evidence-based approach to the question of causation, examining the detailed composition of the Slops, the quantities in which they were released at the three sites mentioned by the BBC, and the environmental and weather conditions at the time. Taking those factors into account, dispersion modelling demonstrates conclusively that the Slops could not have caused toxicological injuries, let alone the deaths, miscarriages and deaths of babies, disfigurement or serious and chronic injuries alleged by the BBC.

### **Other Matters**

16. The BBC attempts to justify a number of allegations which are not even complained of in these proceedings. As a matter of law and proportionality, Trafigura disputes the BBC's entitlement to do so.
17. The criticisms of the Claimant's conduct before 19 August 2006 are denied. The Claimant acted responsibly and in good faith in entrusting the disposal of the Slops to a licensed sub-contractor in Abidjan which had been recommended to it by an experienced shipping agent.

18. The criticisms of the Claimant's conduct after 19 August 2006 are denied. The statements by or on behalf of the Claimant which are criticised by the Defendant were made in good faith and were in all material respects true. The Claimant has consistently stated, since as early as September 2006, that the Slops did not contain and cannot have released hydrogen sulphide in lethal or dangerous concentrations. That is based on contemporaneous independent testing and has been shown to be true.

**20 November 2009**