

OVERVIEW

Vale, S.A. (“Vale”), incorporated and publicly traded in Brazil, is the world’s largest iron ore mining company with 80,000 employees and revenue in 2019 that exceeded \$37.570 billion. On January 25, 2019, a chemical waste (“tailings”) dam, owned and operated by Vale, near Brumadinho, a small town in southeastern Brazil, (the “Brumadinho dam”) collapsed, killing 270 people, the destruction of the town of Brumadinho, and massive environmental damage that could be felt hundreds of miles away which will take years to clean up. To make matters worse, this was the second such disaster for the company in less than four years. Specifically, in November 2015, a tailings dam co-owned by Vale and Australia’s BHP Group (the “Samarco dam”) collapsed outside of the town of Bento Rodrigues, causing 19 fatalities, the destruction of two villages, and significant environmental contamination. Both the Brumadinho dam and the Samarco dam were constructed utilizing an upstream design. An upstream dam refers to the direction the dam is built, as the dam is gradually constructed over a reservoir of waste. This is the most inexpensive way to construct a dam, and unsurprisingly, the most prone to failure.

In the immediate aftermath of the Brumadinho dam collapse, Brazilian authorities issued severe fines and arrested several top company employees. Vale also suspended its planned dividend, share buybacks, and executive bonuses. Moreover, the Brazilian court issued three orders freezing \$2.9 billion of Vale assets and Brazil's environmental agency (Ibama) fined Vale \$66.3 million for pollution and other regulatory violations related to the breach. As a result, Vale’s stock price to drop over 24.6% and the company to lose close to \$10 billion in market capitalization.

Further, in the months following the second dam collapse, Brazilian prosecutors identified ample evidence that employees at Vale and the Brazilian division of Germany’s TUV SUD, which inspected the dam, were aware of elevated risks associated with the structure with REUTERS reporting that Vale misrepresented the steps it had taken to mitigate safety issues following the collapse of the Samarco dam in 2015. On January 21, 2020, Brazilian prosecutors charged Vale’s former CEO, Fabio Schvartsman, with homicide and also charged Vale, TUV SUD, Schvartsman, and 15 individuals with environmental crimes stemming from the dam collapse. On February 21, 2020, Vale published the results of an independent report into the dam collapse, which revealed that the company knew about the dam’s fragile condition since 2003.

VALE’S FALSE AND MISLEADING STATEMENTS

According to the WALL STREET JOURNAL, Vale’s executive manager for strategic planning, Lúcio Cavalli, said at a press conference in 2015, shortly after the Samarco disaster, that Vale did not have any upstream dams in its portfolio. Other Vale executives also told investors that Vale had no upstream dams. When an analyst asked in a July 2016 conference call about a possible ban on upstream chemical waste dams, the head of Vale’s iron-ore division, Peter Poppinga, responded that “such a prohibition wouldn’t affect the company” and “we don’t have those dams.” Yet, Vale was still operating almost 30 upstream chemical waste dams at that time.

When Fabio Schvartsman, was named Vale’s CEO in March 2017, he committed to changing Vale’s safety record, vowing “Samarco never again” among a variety of other false and misleading statements made to restore investor confidence. Later, in April 2017, Vale acknowledged the existence of its upstream chemical waste dams. However, the disclosure was buried in a single paragraph within Vale’s 289-page annual report. No further disclosures were made, leaving investors

CASE DETAILS	
ISIN:	BRVALEACNOR0, BRVALEACNPA3
Relevant Period:	November 16, 2015– July 3, 2019

and the public with little chance to gauge the risks of such structures until the second disaster in January 2019. Vale finally admitted to operating 19 upstream dams after the collapse of the Brumadinho dam.

U.S. CLASS ACTIONS

On January 28, 2019, a securities class action was filed against Vale, its CEO, and CFO as a result of the Brumadinho dam collapse.¹ As customary, a motion to dismiss was filed in February 2020, and is pending a ruling. DRRT will continue to monitor the class action with an eye towards a potential opt-out and also as an avenue to acquire further evidence supporting our clients' claims in Brazil.

ARBITRATION IN BRAZIL

With clear and obvious knowledge of the existence of its upstream chemical waste dams and the risks associated therewith since 2003 and later even more-so after the Samarco dam collapse in 2015, Vale decided to mislead and defraud investors through false assurances and statements concerning operational safety. The material misstatements and omissions made by Vale violated the Brazilian Civil Code and Brazilian Corporation Law. As a result of the publicly available information, and ongoing government investigations, there is strong evidence against Vale to hold the company liable for shareholder losses that were a direct result of Vale's material misstatement omissions concerning its operations, including the Brumadinho dam. The Statute of Limitations to file these claims under the applicable Brazilian law is three years and is set to expire on January 25, 2022.

As a publicly traded company on Brazil's Sao Paulo stock exchange, Vale's bylaws mandate that any shareholder disputes with the company must be arbitrated in front of the B3's affiliated Market Arbitration Chamber ("MAC"), an institution of the B3 - Brasil Bolsa Balcão S.A., formerly BM&FBOVESPA in Brazil. DRRT has substantial experience in Brazilian arbitration. Accordingly, DRRT has already retained a highly respected Brazilian law firm that has significant experience handling arbitrations on behalf of institutional investors at the MAC, as well as a highly acclaimed Brazilian economist to help support our claims against Vale. On October 20, 2020, DRRT filed its first Request for Arbitration against Vale S.A. initiating arbitration proceedings at the MAC. This Request for Arbitration was made on behalf of a group of 42 institutional investors with total damage claims over BRL 1.768 billion (roughly USD 316 million).

NEXT STEPS

We will be filing a Request for Joinder to our First Request for Arbitration on behalf of another group of institutional investors in 2021. The confidential representation of investors is risk-free and cost-free and purely based on a back-ended success fee and co-funded by Therium, a global litigation funder.

If you wish to obtain an analysis of your potential claims Brazil under the authority of MAC, please provide your transaction data for the ISINs listed above covering the Relevant Period to Valeinvestorclaims@drdt.com. All data will remain confidential and our review and evaluation is complimentary.

¹ Rauch v. Vale S.A. et al, Docket No. 1:19-cv-00526 (E.D.N.Y. Jan 28, 2019),