

Dutch Advertising Code Foundation
Attn Advertising Code Authority
PO Box 75684
1070 AR Amsterdam

Note: this text is a translation of the original complaint in the Dutch language. The complaint in the Dutch language is the authoritative text.

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Date	email
6 January 2010	Jens.van.den.Brink@kvdl.nl

Re: Complaint Trafigura advertisement 30 September 2009

Stichting GREENPEACE NEDERLAND, registered in Amsterdam,
complainant,

lawyer: mr J.P. van den Brink and mr S.C. van Loon

lodges a complaint following an advertisement by:

the private company with limited liability **TRAFIGURA BEHEER B.V.**, whose registered head office is situated in Amsterdam and **TRAFIGURA LIMITED**, company under foreign law, whose head office is registered in the United Kingdom;
defendants

Introduction

1. Trafigura Beheer B.V. is a multinational company trading in petroleum, minerals and other commodities. Trafigura Beheer B.V. is active in 42 different countries, and its registered office is situated in Amsterdam. Trafigura Beheer B.V. recorded an annual turnover of more than 73 billion US dollars in 2008. Trafigura Limited is a subsidiary of Trafigura Beheer B.V., whose head office is registered in the United Kingdom. Trafigura Beheer B.V. and Trafigura Ltd are hereinafter also jointly called “Trafigura”.
2. Stichting Greenpeace Nederland (hereinafter: Greenpeace) is the Dutch division of the renowned environmental organisation Greenpeace. Greenpeace is an independent, non-commercial organisation which globally defends environmental interests.
3. A number of national newspapers, including, but not exclusively De Volkskrant, De Telegraaf and Het Parool featured a half page advertisement (hereinafter: the Advertisement) on Wednesday 30 September 2009, reading as follows:



Scheepsafval van de Probo Koala kon geen dodelijk of ander ernstig letsel veroorzaken – zo bevestigt High Court in Londen

30 september 2009

Afgelopen woensdag, 23 september, heeft het High Court in Londen de schikking bekrachtigd die werd getroffen tussen Trafigura en ongeveer 30.000 inwoners van Ivoorkust.

Dit betekent dat zowel de rechter als de advocaten van de eisers hebben ingestemd met het standpunt van Trafigura dat het scheepsafval van de Probo Koala geen dodelijk of ernstig letsel heeft kunnen veroorzaken. Zij verklaarden eenduidig dat het afval hoogstens een aantal kortstondige, griepachtige symptomen en benauwdheid kon veroorzaken.

Deze conclusie, opgenomen in een Gezamenlijke Verklaring, volgt op grondige analyse van 20 onafhankelijke deskundigen. Dit is veruit het meest volledige onderzoek naar de gebeurtenissen rond het afval van de Probo Koala in Ivoorkust in augustus 2006. De deskundigen hebben een wettelijke verplichting jegens het Hof om naar beste kunnen te rapporteren. Tijdens de behandeling van de Gezamenlijke Verklaring in de rechtbank, bevestigde rechter MacDuff:

„Op basis van de (proces-) stukken weet ik dat de deskundigen zeer duidelijk zijn geweest over het feit dat het afval het soort symptomen en ziektes die er in diverse media aan werden toegeschreven niet heeft kunnen veroorzaken. Ik wil nogmaals benadrukken dat ik op basis van de processtukken de Gezamenlijke Verklaring 100 procent waarheidsgetrouw acht”.

Trafigura betreurt dat de berichtgeving over de zaak te vaak is ontaard in een "trial by media" en heeft de media hier voortdurend op gewezen. De onderneming heeft van meet af aan verklaard dat ernstige aantasting van de gezondheid niet veroorzaakt kon worden door het afval van de Probo Koala. Na alle onjuiste berichtgeving terzake is Trafigura dan ook verheugd dat de rechter dit standpunt heeft bevestigd.

Trafigura betaalt omgerekend 1.140 euro per eiser. Dit betekent niet dat zij daarmee aansprakelijkheid erkent. Niettemin betreurt Trafigura de overlast en beroering die het voorval met de Probo Koala teweeg hebben gebracht bij de lokale bevolking. Trafigura streeft altijd naar een goede invulling van haar economische en maatschappelijke betrokkenheid bij de West-Afrikaanse regio. Deze schikking is volledig in lijn met deze visie.

Voor meer informatie www.trafigura.com

Trafigura is een vooraanstaande internationale handelsonderneming, gespecialiseerd in olie, mineralen en metalen. De onderneming heeft 60 kantoren in 42 landen en hoofdkantoren in Amsterdam, Londen en Luzern. Trafigura's belangrijkste handelsactiviteiten bestaan uit levering en transport van ruwe olie, olieproducten, metalen (waaronder koper, lood, zink en aluminium), metaalerts en concentraten.

A copy of the Advertisement in De Volkskrant dated 30 September 2009 is attached to this complaint as **appendix 1**. An English translation of the advertisement can be found at the end of this paper.

4. The Advertisement is misleading as referred to in article 8 of the Nederlandse Reclame Code {*Netherlands Advertising Code*} (hereinafter: 'NRC') in respect of the following points:
 - a. It is wrongfully suggested that a High Court ruling was issued in the English lawsuit of the Ivorian victims and Trafigura;
 - b. It is wrongfully suggested that Mr Justice MacDuff has ruled that the Probo Koala waste could not have caused deaths or other injuries;

- c. The Advertisement wrongfully mentions dumping *ship's* waste.
- d. It is wrongly suggested that Trafigura has now been fully exonerated from any dishonest action in the Probo Koala affair and that Trafigura has become the victim of a 'trial by media'. Trafigura has indeed misbehaved:
- Trafigura washed inferior crude oil using an experimental process for profit purposes, knowing that this creates a hazardous and toxic waste by-product.
 - Trafigura repeatedly lied about the nature of the waste when it offers it for processing in different ports, apparently in an attempt to have the waste processed as cheaply as possible, without consideration for people and the environment. Trafigura passed the waste off as ordinary ship's waste, created when cleaning the ship's hold.
 - Trafigura subsequently passed the waste on to the small Ivorian company Tommy, without ascertaining that this hazardous waste would be processed correctly and safely. Tommy dumped the waste on an open tip. The price demanded by Tommy and the hand-written offer stating that the waste would be "discharged", in other words dumped rather than processed or incinerated (which are the options in the case of hazardous waste), at "Akwedo", a notable tip in a densely-populated district of Abidjan, infers that Trafigura knew or should have known that it was likely that the waste would not be processed correctly.
 - In order to remove any suspicion of wrongful action, Trafigura requested Tommy to compile a bogus invoice after dumping the waste, showing a price which is more in line with the amount charged for correct processing in the Netherlands, apparently to make it appear to the authorities in Amsterdam that Trafigura has paid out an amount in Ivory Coast which would be sufficient for careful processing of the waste.
- e. The Advertisement wrongfully states that Trafigura always seeks to discharge its economic and social commitment in the West African region;
- f. The Advertisement wrongfully suggests that 20 independent experts concluded that the Probo Koala waste could not have caused deaths or other injuries;

These points will be explained in detail below. We will first explain why the Advertisement is advertising as referred to by the NRC.

Advertising

4. The Advertisement is advertising as referred to in article 1 of the NRC. Although the Advertisement does not advertise a specific Trafigura product, Trafigura strives to remove possible objections amongst consumers against its products and services and to persuade consumers that it is a bona fide company with honest objectives. The fact that consumers do not directly buy (in a narrow sense of the word) Trafigura products, is irrelevant. Business recipients are also deemed to be consumers (article 18 NRC). The Advertisement therefore aims to improve the Trafigura image amongst consumers. Communications aimed at or intended to improve the image of the advertiser are of a promotional nature, and are therefore by definition advertising, as ruled by the Reclame Code Commissie {*Advertising Code Commission*} ('RCC') in relation to www.varkensinzicht.nl. A communication aimed at improving the image of pig farming was deemed to be promotional and therefore advertising in this ruling.¹
5. In addition to promoting its image, Trafigura indirectly extols the virtues of its products and services with the Advertisement. The Advertisement should therefore be deemed to be advertising also in this respect. See in this context, for instance, the rulings of the RCC in relation to 'Bontfeiten' and in relation to a communication by Philip Morris B.V., in relation to which the RCC ruled that information on fur farms, respectively the development of less hazardous tobacco products, should be deemed to be a communication in which the advertiser extols the virtue of its services, or propagates ideas, and was therefore advertising as referred to in article 1 RCC.²
6. In addition, the Advertisement refers to the Trafigura website, www.trafigura.com, where the services and activities of Trafigura are extensively stated and promoted. The Advertisement also states the following:

'Trafigura is a leading international trading company, specialising in petroleum, minerals and metals. The company has 60 offices in 42 countries and head offices in Amsterdam, London and Lucerne. Trafigura's main trading activities comprise delivery and transport of crude oil, oil products, metals (including copper, lead, zinc and aluminium), metal ore and concentrates.'

¹ RCC ruling dated 21 May 2007 (no. 07.0234; in relation to www.varkensinzicht.nl).

² RCC ruling dated 15 March 2005 (no. 05.0030; in relation to 'Bontfeiten'); RCC ruling dated 15 June 2004 (no. 04.0161; in relation to Philip Morris Holland B.V.).

This must also be considered to be public promotion.

7. In view of the above, the Advertisement is not purely informative but has evidently a canvassing purpose. It is promotional in its nature, champions the company's services and products and is intended to reach a wide-ranging audience.³ It should therefore be deemed to be advertising as referred to in article 1 NRC.

Actual context

8. Now that it is established that the Advertisement represents advertising as referred to in article 1 NRC, we will explain why the Advertisement is misleading. Based on article 8.1 NRC, actual context, as well as all characteristics and circumstances of an advertisement are taken into account when deciding whether an advertisement is misleading. The actual context is therefore discussed in the first place.

Washing low-quality crude oil results in merchantable oil and toxic waste

9. In 2006, a large quantity of hazardous waste was dumped illegally in Abidjan, the commercial capital of Ivory Coast. This waste originated from the ship *Probo Koala*, chartered by Trafigura Limited. Trafigura was also responsible for the creation of the waste. By 'washing' large quantities of coker naphta, processed crude oil with toxic components, with sodium hydroxide (also known as 'caustic soda') at sea, Trafigura obtained a merchantable petroleum product of a better quality. However, a seriously contaminated by-product is created in this process. This waste contains noxious chemical components, including toxic hydrogen sulphide, mercaptan and phenols. This process is, however, considerably cheaper than a 'normal' refinery process on dry land, called MEROX (MERcaptan OXidation), which does not involve the creation of this toxic waste by undergoing an additional oxidation stage following the addition of 'caustic soda'.
10. Trafigura was aware that this was a controversial and experimental chemical process, with the creation of toxic waste as a by-product. The internal memo by Trafigura dated 28

³ See also the RCC ruling dated 10 November 2009 (no. 09.00611, in relation to Kucharek versus Kuijpers), which ruled that business cards are advertising as referred to by the NRC.

December 2005, addressed to Trafigura director Dauphin, amongst others, and which is attached as **appendix 2**, includes the following statement: *“Caustic washes are banned by most countries due to the hazardous nature of the waste (mercaptans, phenols, smell) and suppliers of caustic are unwilling to dispose of the waste since there are not many facilities remaining in the market... Under EU law you are no longer allowed to transport such waste across EU borders.”* Naeem Ahmed of Trafigura describes the waste created in this process as *“toxic caustic”* in a different internal email series. In other words, a toxic, caustic substance (**appendix 3**, email dated 27 December 2005, 19:29 hours).

11. Trafigura persisted because it expected to make a large profit from this transaction, as is evident from internal correspondence: *“this is as cheap as anyone can imagine and should make serious dollars”* (appendix 3: internal Trafigura email dated 27 December 2005 16:54 hours). *“We will make it happen. PMI showing us more barrels Super Cheap now”* (appendix 3, email from McNichol to Trafigura director Dauphin, dated 27 December 2005, 23:24 hours). The Mexican PMI offered Trafigura the coker naphta which Trafigura would wash. And: *“Graham has worries that it will all turn black. Me and Leon want it cos each cargo should make 7m!! [7 million]”* (appendix 3, email from McNichol to Ahmed dated 28 December 2005, 9:30 hours).

La Skhirra, Tunisia – chemical washing on dry land

12. Trafigura called on the Tankmed company in the first instance in March 2006, to carry out the process in the Tunisian port of La Skhirra. After a number of Tankmed employees fell ill when carrying out the work and ended up in hospital, Tankmed refused to continue to cooperate. Trafigura is apparently preparing a report of the events at the request of the Tunisian government, which will initially be e-mailed to recipients within the company. This memo contains a passage with an explanation for the noxious odour which was created: *“Due to the manufacturing process of the unleaded gasoline blendstock, a proportion of Di-enes are present. These chemicals are known for causing stability problems in oil products, and are the likely cause of the noxious odours being produced in the sump tank.”* At the request of Naeem Ahmed of Trafigura, this incriminating paragraph is supposed to have been deleted. (**appendix 4**: report entitled ‘Odour investigation – La Skhirra’ plus emails from Ahmed and Foster dated 24 March 2006).

Chemical washing on the high seas onboard Probo Koala

13. As no other company in the world dared to undertake the experimental chemical processing, Trafigura subsequently decided to conduct the process itself on the high seas. Internal Trafigura emails show the subsequent suggestion that a ship be used which is almost ready to be scrapped: *“Does it make any sense to take on t/c [time charter] a vessel that is about to be scrapped for something like \$5k a day (or am I dreaming) and park somewhere in WAF [West Africa] in order to carry out some of the caustic washings over there? I don’t know how we dispose of the slops and I don’t imply we would dump them, but for sure there must be some way to pay someone to take them.”* (**appendix 5**: internal email exchange Trafigura 10 to 13 March 2006, see email dated 10 March 2006, 23:05 hours). It was then pointed out that *“that implies ... you do not care if she sinks”* (appendix 5, email 13 March 2006, 9:15 hours). And later: *“we need dogs. And cheap ones too”* (appendix 5, email 13 March 2006, 14:31 hours). Ultimately the Probo Koala was chosen, a ship chartered by Trafigura Ltd since October 2004. The process was then conducted during April to June 2006 on the high seas, off the coast of Malta and Gibraltar.

La Skhirra, Tunisia – processing the waste from Probo Koala

14. After washing an initial load of coker naphtha, Trafigura looked for ways to get rid of the resulting waste. Trafigura first attempted this again in La Skhirra. Surprisingly, Trafigura (Gampierakis) instructed the captain of the Probo Koala via email not to divulge the true nature of the waste to the Tunisians.

‘KINDLY DO NOT, REPEAT DO NOT DISCLOSE THE PRESENCE OF THE MATERIAL TO ANYONE AT LASKHIRA AND MERELY DECLARE IT AS TANK WASHINGS’ (**appendix 6**, e-mail dated 15 April 2006).

The captain replied with *“...well noted”*. This while the memo attached as appendix 2 shows that Trafigura had referred internally to the *“hazardous nature”* of the waste products and the *“toxic caustic”* in the waste (appendix 3). Trafigura was also aware that there are few facilities in the world which are able to process this type of waste. Trafigura evidently tried to have the waste processed in Tunisia by lying about the nature of the waste, and by pretending this concerned standard waste created in washing the tanks, knowing that if the true nature of the waste became clear, this could not be processed (not

least in view of the earlier experience in La Skhirra), or only at a very high price.

15. While it is not known whether Trafigura was successful in getting rid of a portion of the Probo Koala waste in La Skhirra, it is clear that there is still remaining waste from the ship. An internal email was then sent, addressed to Trafigura director Dauphin amongst others, to the effect that things were becoming urgent and that the waste had to be got rid of somewhere to “*avoid choking on this stuff.*” (internal emails Trafigura 18 to 26 April 2006, **appendix 7**)

Waste offered in Amsterdam

16. In June 2006, Trafigura had a total of three shipments of coker naphtha chemically washed on the Probo Koala, with more than 500 cubic metres of waste remaining in the ship’s slop tanks. It is unclear in what port Trafigura subsequently attempted to dump the waste; however, it has been confirmed that Trafigura eventually directed the *Probo Koala* to Amsterdam, in an attempt to unload half of the waste there. To this end it approached the Amsterdam Port Service (“APS”) company. Trafigura again withheld the true nature of the waste. Trafigura informed APS that the *Probo Koala* shipment comprised “*Gasoline Slops (majority is water, gasoline, caustic soda)*” (**appendix 8**: email Trafigura to APS dated 20 June 2006). BMA, the Trafigura local shipping agent, then indicated when announcing the ship to the Amsterdam port authorities on 30 June 2006 that the shipment comprised Marpol⁴ Annex I 554 m³ slops described as “*washing water gasoline/caustic soda*” (**appendix 9** appendices at *Probo Koala* 'intake': Preliminary Notice of Arrival and Notification of Noxious Substances). MARPOL Annex 1 waste is defined as oil-containing washing water. Trafigura therefore gave the impression that the waste was ordinary ship’s waste.
17. After APS had transferred half of the Probo Koala waste into the tanks of its ship Main 7, complaints arose about the smell. APS then suspected that the waste might contain components other than those which Trafigura had indicated. APS took samples of the waste and concluded that the waste was outside its acceptance limits. A very high COD (Chemical Oxygen Demand) level was established, which measured 500,000 mg/l (**appendix 10**, e-mail from BMA to Trafigura dated 3 July 2006) while APS had based its

⁴ MARPOL = International Convention for the Prevention of Pollution From Ships.

offer to Trafigura dated 20 June – on the basis of information provided by Trafigura – on a COD level of less than 2,000 mg/l (**appendix 11**, two APS offers dated 20 June 2006, one offer for transfer into an APS boat and one for transfer into APS installations). The Chemical Oxygen Demand, COD, is a measure for the total quantity of oxygen required for breaking down chemical contamination.

18. APS employees also established high concentrations of sulphur dioxide (**appendix 12**: NFI report, pages 4 and 34). APS then increased its price for processing the waste from 20 euros per cubic metre to 1000 euros per cubic metre (**appendix 10**). The following day, 3 July 2006, the authorities were alerted as well, after which an environmental inspector employed by the municipality of Amsterdam ordered APS to shut off its systems.
19. Once APS had discovered the true nature of the waste, it concluded that processing could take place only in Rotterdam, where the correct facilities to process this type of material responsibly were located, at a significantly higher price. Trafigura refused to pay this higher price, had the waste already transhipped pumped back into the *Probo Koala* and started the search for a location where the waste could be unloaded at a lower price.

Estonia and Lagos, Nigeria

20. Although it was known at Trafigura that the waste was toxic to an extent that it was prohibited from being transported across EU borders (see appendix 2: internal Trafigura memo), the *Probo Koala* was ordered to sail to Estonia, and then to Africa, where it put in at a Nigerian port in the first instance. An internal email series dated 10 – 16 August 2006 which describes this is attached as **appendix 13**. Trafigura succeeded in finding a company in the Nigerian port of Lagos which was prepared to unload the waste. When this company suggested pumping the waste into an open vessel, the captain objected. He may have feared that the actual composition of the waste offered would then come to light and people, as had happened earlier in Tunisia, would fall ill as a result of exposure to the toxic waste.
21. The email correspondence mentions this incident as an illustration that "*Lagos do not have proper de-slopping facilities*" (email dated 10 August 2006, 2:01 p.m., appendix 9). Despite this warning, the correspondence shows that Trafigura then evidently made plans to tranship the waste beyond Nigerian territorial waters on the high seas, or (according to

the last instruction in the email dated 16 August at 10:18 hours, evidently after consultation with Trafigura director Claude Dauphin – CD) in the port of Lomé in near-by Togo into another ship and sail back in that ship to Nigeria to re-offer the same waste there under a different name.

Dumping waste in Abidjan, Ivory Coast

22. The plan was evidently not executed, because the *Probo Koala* ultimately ended up in the port of Abidjan, Ivory Coast, in August 2006. There Trafigura called on the recently established Compagnie Tommy, which accepted the *Probo Koala* waste at a very low price (35 US dollars per cubic metre) from Trafigura, as shown in a handwritten letter dated 18 August 2006 from Tommy to Trafigura, in confirmation of the order (**appendix 14**). Tommy then dumped the waste on 19 and 20 August 2006 using 9 trucks which jointly took on 16 shipments from the *Probo Koala* at and around Akouedo, a rubbish tip in Abidjan, and an area also inhabited by people. Protests arose in Akouedo after the dumping of 5 truckloads, due to the smell. The remaining 9 truckloads of waste were then evidently dumped at 13 different random locations in and around Abidjan. See appendix **15** for a map with dumping locations.

Effects and responsibility regarding the dumping of waste

23. Aside from the effects of the dumping on the environment, the effects on public health are far-reaching, according to official information from the Ivorian government. According to the Ivorian Ministry of Economic Affairs, which organises the distribution of compensation, 16 individuals have died as a result of exposure to the waste (**appendix 16**). The United Nations have also investigated the *Probo Koala* affair. The UN report mentions 15 fatalities and reports that 69 individuals have been admitted to hospitals and more than 108,000 people sought medical assistance (appendix **17**: addendum to the United Nations report, § 31).
24. Trafigura denies responsibility for dumping the waste and is of the opinion that Tommy is the only culpable party. Trafigura states that it did not know, and could not suspect that Compagnie Tommy would simply dump the waste instead of processing it in a responsible manner, since it had the required licence for processing the waste and had also

promised that it would be processed at a location "*properly prepared to receive any type of chemical product*"). We will return to this later in this complaint.

25. Trafigura also denies that there is a connection between the dumping of the waste and symptoms relating to the health of the Abidjan residents. Nevertheless, it has been established that components of the waste can cause serious health problems. This is evident from a study which was conducted shortly after the dumping on behalf of Trafigura itself (**appendix 18**; Minton, Terhorne & Davies report, September 2006, § 9.1 and onwards) amongst other things. This report was initially kept confidential by Trafigura, but was disclosed eventually. The research bureau which conducted the study concludes as follows:

*'the most severe symptoms are likely to be experienced by those living and working at or near the dump sites who may come into direct contact with the liquid slops residues and high concentrations of gas. For these people, **the possible consequences are burns to the skin, eyes and lungs, vomiting, diarrhoea, loss of consciousness and death**'* (§ 5.1) [in bold, lawyer]

More than three years later, an employee of the research bureau in question distanced itself from the conclusions of the study via a statement on the Trafigura website and called the report 'preliminary' (**appendix 19**: statement John Minton).

26. Email correspondence would indicate that Trafigura hired the research bureau in question as inspectors in October 2006 when delivering comparable toxic waste transported by sea to a storage tank located in Slovag, Norway, in the ship Probo Emu (see appendix 20, email message from Trafigura to Vesttank dated 7 October 2006). This storage tank exploded in May 2007, after which residents from a nearby village fell ill and developed health problems. There are currently criminal proceedings underway in Norway in relation to this matter. The research bureau itself would therefore seem be involved in the matter, which begs the question as to whether its 2009 'rectifying message' is sufficiently objective.

Settlement Trafigura Ivory Coast

27. The Ivorian government holds Trafigura liable for the injuries and has instigated civil proceedings against the company. The Ivory Coast arrested Trafigura top men Dauphin and Valentini and Mr Kablan, employed by Trafigura subsidiary Puma, in September 2006 and criminal proceedings were instigated against them.
28. Trafigura entered into a settlement with the Ivorian government in February 2007, a Protocole d' Accord (**appendix 21**, plus an English translation attached as **appendix 22**). Trafigura denies any liability in this document but promises to pay the Ivorian government an amount of 75 billion francs CFA (converted approximately 152 million euros) in full financial discharge, and later a supplementary amount of 7 million USD. In return, the civil proceedings in Ivory Coast against Trafigura were discontinued. Although Trafigura itself explicitly denies that with the settlement an agreement was reached in relation to the prosecution, or to drop charges, the Protocole d' Accord shows that these criminal proceedings were certainly provided for. It was agreed that Trafigura will only pay out once a bailiff had confirmed that Dauphin, Valentini and Kablan were onboard an aeroplane on their way home (appendices 21 and 22 last page and article 5.1 Protocole, see also considerations 4, 6 and 12 and article 4.2).

Other legal proceedings against Trafigura.

29. Trafigura has, as mentioned, arrived at a settlement with the Ivorian government. Trafigura is being prosecuted in the Netherlands in connection with the incident in Amsterdam. In addition, Greenpeace has submitted a request to prosecute Trafigura also for the events in Ivory Coast.
30. The British firm of solicitors, Leigh Day, has instigated judicial proceedings in the United Kingdom against Trafigura on behalf of more than 30,000 Ivorian victims. Leigh Day claims damages amounting to more than 100 million British Pounds in this case, based on liability for injuries. The case focuses on liability for 'less serious' injuries rather than on liability for serious injury such as death. This concerns a civil case, and Leigh Day works on a 'no cure, no pay' basis.
31. Leigh Day announced in this respect on its website on 8 November 2006 that Trafigura must be held liable for the injuries suffered by the victims for whom Leigh Day acts.

Trafigura then instigated civil proceedings against the firm of solicitors in the English courts because this was said to constitute slander.

Settlement Leigh day - Trafigura

32. It became known on 16 September 2009 that Trafigura, the Ivorians assisted by Leigh Day and Leigh Day itself had arrived at a settlement. The contents of the settlement is not public. Some important parts did become public. Trafigura will pay approximately 33 million euros to the victims represented by Leigh Day, in addition to the 159 million euros already paid to the Ivorian government. Despite having paid a total of 193 million euros, Trafigura again denied liability. In addition, Trafigura will pay the legal costs incurred by Leigh Day. The size of this amount has not been divulged. Greenpeace understands from its sources that these legal costs amount to many millions of pounds. Curiously, the slander proceedings against Leigh Day were also withdrawn.
33. The parties then issued a 'Joint Statement' (**appendix 23**: Joint Statement) on 19 September 2009. This statement reports that the experts commissioned have not been able to establish a connection between the dumped waste and deaths, miscarriages, birth defects, sight impairment or other serious chronic injuries. Leigh Day says in the Statement that the waste from the *Probo Koala* could at most have caused short-term symptoms such as flu-like symptoms and tightness of the chest.
34. Greenpeace points out that the Joint Statement is the result of negotiations and cannot be deemed to be objective truth in any way whatsoever. It is also notable that Leigh Day had an interest in a settlement on 2 points. Firstly the charges against its firm were withdrawn, an issue which was unrelated to the liability case in which Leigh Day represented the Ivorians. By linking these two issues, the size of the compensation due to the Ivorians will undoubtedly have been negatively affected. Secondly, Leigh Day's costs have been reimbursed in full in this way (upon losing the case, Leigh Day would have got nothing as they worked on a 'no cure no pay' basis).
35. As is customary with a settlement during ongoing proceedings, the settlement was submitted to the trial judge in the London High Court, Mr Justice MacDuff. This makes the settlement easier to enforce in case of default by one of the parties.

Misrepresentation

36. Below we explain on which points and why complainant is of the opinion that the Advertisement contains misleading advertising.

a) It is wrongly suggested that a court judgement has been issued.

37. In the first place the Advertisement states four times that the High Court in London has arrived at a judgement in the proceedings between Trafigura and the Ivorian victims.

(1) *'Ship's waste from the Probo Koala could not have caused deaths or other injuries – confirmed by the High Court in London'* (heading)

(2) *'both the judge and the lawyers of the claimants have agreed with Trafigura's position that the ship's waste could not have caused deaths or serious injuries. (3) They clearly stated that the waste could have caused at worst a number of short-term, flu-like symptoms and tightness of the chest.'* second paragraph, underlining by Greenpeace).

(4) *'After all the inaccurate reporting in this matter, Trafigura is pleased that the Judge has confirmed our position [that serious adverse effects on health could not have been caused by the waste from the Probo Koala, Greenpeace]* (fourth paragraph).

38. Trafigura wrongfully attempts here, also deliberately, to mislead consumers by giving the incorrect impression that a judgement has been issued, or the High Court or a judge at the High Court has in any way arrived at a judgement in law.

39. This is not the case. An individual High Court Judge has merely endorsed a settlement between parties and issued comments in a personal capacity. Neither the High Court, nor this Judge in person has issued a ruling on the question as to whether the waste could have caused deaths or injury.

40. The state of affairs is comparable with having an official report drawn up of a settlement, as is sometimes done in the Netherlands. The judge does not issue a substantial judgement; neither in respect of the settlement, nor in respect of the dispute on which it is

based. The possibility of formalisation of the settlement is intended, on the contrary, to terminate the proceedings without consideration by a judge. A case is settled precisely so that a legal judgement need *not* to be issued. The norm is that the judge endorses at the request of the parties, and without examining the case himself, a settlement arrived at by the parties. Settling is always preferable to litigation, which is also taught by the Dutch code of conduct for lawyers in the Netherlands, for instance. Settlements save time and money, not only for clients but also for the judiciary. It is therefore to be expected that the judge makes some approving comments on the occasion of endorsing the settlement.

41. See in this connection also the statement attached as **appendix 24** (with a CV, appendix 25) of solicitor Mark Stephens, partner at the firm of solicitors of Finers Stephens, Innocent, of London. Stephens is one of the most prominent British media lawyers. Stephens confirms that the comments of Mr. Justice MacDuff do not carry any legal status.

“On 23 September 2009.... there was an exchange between Counsel in the course of which, Mr. Justice MacDuff made comments on press he had seen regarding the case.... Mr Justice MacDuff made these comments in a procedural hearing without... any legal argument, and without making a binding legal finding on the merits of the case. The Judge’s comments rise to no more than an impression provoked by a passing comment and it would be wholly wrong to characterise this exchange as a judgment under English law (nor is it in any way binding or a finding or indeed a “confirmation”).”

42. His colleague, barrister Samuel Townend, of Keating Chambers in London, also confirms that approving comments by a judge during a hearing at which a settlement is formalised must be considered to be a “*personal view*” and a “*pat on the back*’ for saving Court time and money’ (appendix **26** Statement by Townend, dated 7 December 2009).

43. Trafigura misleads the general public by suggesting in the Advertisement that the “High Court” has arrived at a particular legal finding. This is confirmed by Stephens:
“Consequently, the use of Mr Justice MacDuff’s comments in the Trafigura advertisement of 30 September 2009 entitled “Waste from Probo Koala could not cause legal or other injuries – the London High Court confirms” is clearly misleading, as it incorrectly states that the comments made by Mr Justice MacDuff somehow amount to an official

endorsement by the London High Court of Trafigura's position.” (appendix 24, p. 1, final paragraph)

b) It is wrongfully suggested that Mr Justice MacDuff has ruled that the waste could not have caused deaths or other injuries.

44. It would also be misleading if Trafigura would have merely stated in the Advertisement that Mr Justice MacDuff indicated that he was personally of the opinion that the Probo Koala waste could not have caused deaths or other injuries. Mr Justice MacDuff states in the quotation cited in the Advertisement:

'I know from the (court) papers that the experts were quite clear that the waste could not give rise to the sort of symptoms and illnesses which were being attributed to the waste in various media. I wish to underline once more that based on the court papers I consider the Joint Statement 100% truthful.'

Mr Justice MacDuff therefore says that he is sure that the *experts* have been very clear that the waste could not have caused the sort of *symptoms and illnesses* ascribed to the waste. This is followed by his opinion that he deems the Joint Statement to be 100% truthful. This is something quite different to what was stated in the Advertisement, that the *Judge* has confirmed that the waste could not have caused *deaths or other injuries*. Firstly because Mr Justice MacDuff merely states that *the quoted experts* are of a particular opinion. Secondly because Mr Justice MacDuff does not say that the experts state that the waste could not have caused death or other injuries, as is wrongfully stated in the heading of the Advertisement, but only that the experts have been clear that the waste could not have caused the sort of symptoms and illnesses attributed to the waste. None of the experts has established that the waste could not have caused any injury, as far as Greenpeace is aware. Thirdly, because the issue as to whether the waste has caused death was not at all relevant in the English civil proceedings. The victims represented by Leigh Day only claimed damages for less serious symptoms.

c) The Advertisement wrongfully mentions dumping *ship's* waste.

45. Trafigura misleads consumers further by indicating the hazardous waste of the Probo Koala consistently as ‘*ship’s waste*’ in the Advertisement. Trafigura again attempts to conceal the true nature of the waste, as it did in any event when offering the waste in La Skhirra (Tunisia), Amsterdam, Abidjan (Ivory Coast) and probably in Lagos. The waste from the *Probo Koala* is not ‘*ship’s waste*’. The word *ship’s waste* implies that we are concerned with waste created during normal exploitation of a ship, when cleaning the tanks of a ship, for instance. However, we are not concerned with the normal ship's waste of the Probo Koala here, but with waste created during a controversial chemical processing process which was first conducted ashore. After accidents took place in Tunisia, Trafigura did not succeed in finding another shore location, after which it was compelled to carry out the process itself onboard ship and at sea. Trafigura knew that hazardous waste would be created in this chemical process, and sent out an internal memo to this effect (see appendix 2).
46. The Netherlands Forensic Institute (NFI) has inspected samples taken from the waste substance in the Probo Koala slop tanks. NFI concludes in its expert report dated 29 January 2007⁵ that the Probo Koala waste was a complex mixture “of water with an extreme degree of acidity and an oil-like fluid, both *contaminated with very specific components, including phenols, di-sulphides and mercaptans.*” (p. 19, NFI report, appendix 12). According to NFI, the COD level of the water portion of the waste was 720,000 mg/l – this is a contamination level higher than previously established by APS (see paragraph 17). NFI classifies the waste as such that it is prohibited from being exported to an African state by virtue of the European Transfer of Waste Shipment Regulation (259/93), such as Trafigura itself had concluded as early as 2005 (see paragraph 10).
47. The fact that Trafigura deliberately makes it appear that the waste is ordinary ship’s waste, while it knows that this is not the case, is confirmed by the instruction to the Probo Koala when it put into the port of La Skhirra: ‘KINDLY DO NOT, REPEAT DO NOT DISCLOSE THE PRESENCE OF THE MATERIAL TO ANYONE AT LASKHIRA AND MERELY DECLARE IT AS TANK WASHINGS’ (appendix 6). Trafigura remains incorrigible and now misleads Dutch consumers after having misled authorities in the

⁵ The full NFI report is available from http://www.greenpeaceweb.org/trafigura/NFI_deskundigenrapport.pdf

Netherlands, Nigeria, Ivory Coast and Tunisia, by again suggesting the waste to be standard *ship's* waste in the Advertisement.

d) It is wrongly suggested that Trafigura has now been completely exonerated from any dishonourable action in the Probo Koala affair and that Trafigura has become the victim of a 'trial by media'.

48. Trafigura implies in the Advertisement that it has become the victim of a 'trial by media' and that it has now been exonerated from all blame by the 'judgement' of the High Court in London. This can be seen from the following passage, amongst others: "*Trafigura regrets that the reporting of the case has often degenerated into a 'trial by media' and has consistently pointed this out to the media. From day one, the company has maintained that serious injuries to health could not have been caused by the waste from the Probo Koala. After all the inaccurate reporting in this matter, Trafigura is pleased that the Judge has confirmed our position.*"

49. Trafigura wrongly makes it appear as if it has now been exonerated of all blame. But question marks may be placed unabated at the integrity of Trafigura's actions around the Probo Koala affair. Below we describe some concrete examples of dishonest action by Trafigura.

Violation of EU legislation by exporting waste.

- I. Trafigura knew that it was carrying out an experimental chemical process which created hazardous chemical waste (appendix 2, internal memo by Trafigura). It also knew that it was prohibited from transporting this waste across EU borders (ditto). Nevertheless, Trafigura shipped the waste from Amsterdam to Africa after the Amsterdam processing company discovered the different nature of the waste and drastically increased its processing price. Criminal proceedings have been brought against Trafigura, amongst others, in the Netherlands with regard to the events in Amsterdam described in paragraphs 16 to 19 and the export of the waste to Africa.

Processing of waste in Africa carries a risk

- II. Trafigura knew that there were "not many facilities in the market" able to process this waste. Although the waste could be correctly processed in Europe, Trafigura opted to

have this done in Africa for reasons of profit (see also paragraphs 50 to 55).

Trafigura knew that the waste processing price quoted by Tommy was too low for careful processing.

- III. Trafigura also knew, certainly after the incident in Amsterdam, that processing of the waste could only be done responsibly at high prices. APS in Amsterdam demanded 1,000 (one thousand) euros per m³ and stated that processing could only take place in the port of Rotterdam (again confirmation that there exist few facilities for this process). This points to the fact that Trafigura should at least have been suspicious in relation to the offer of the recently established Ivorian company Compagnie Tommy to ‘process’ the same waste of the *Probo Koala* for 35 US dollars per m³ (approximately 20 euros) in Abidjan, Ivory Coast.

Trafigura had Tommy draw up a false invoice to deceive the Dutch authorities.

- IV. The fact that Trafigura knew that something was wrong also follows from the internal Trafigura email correspondence after the dumping. Following the departure of the *Probo Koala* from Amsterdam, a scandal broke out in the Netherlands. In this context Mr De Boer of the Dutch water police contacted Trafigura, including on 24 August 2006, in order to establish whether the waste was processed correctly. Naeem Ahmed of Trafigura told Mr De Boer that the waste in Abidjan was unloaded as “Chemical Waste”, as is evident from internal Trafigura emails (**appendix 27**, email correspondence dated 24 August 2006). The Dutch police then asked for documentation confirming that it had indeed been unloaded as “chemical waste slops”, with a copy of the invoice. Naeem Ahmed requested this subsequently from his colleague Jorge Marrero. He added as follows: “*Bear in mind that it would have cost us approx \$ 250k to discharge 200 cbms in Amsterdam*” (appendix 27)

Marrero then instructed Kablan, of local Trafigura subsidiary Puma, on 25 August 2006 as to what the invoice should state exactly (**appendix 28**). Ahmed requested an invoice with a price of 500 US \$ for the chemical waste and 50 US \$ for the other waste per m³. Even though Tommy in its offer dated 18 August (appendix 14) had already quoted a price of respectively 35 US \$ for the chemical waste and 30 US \$ for the other waste. Greenpeace assumes that Trafigura actually paid Tommy these prices. Ahmed explicitly mentions “*Please make both WAIBS and Compagnie Tommy aware*

that they may be contacted by European customs to check on the removal of the slops and the cost of removal as per above". It evidently needs to be pointed out that the information in this invoice is to be passed on, rather than the actual costs and the actual description under which the waste has been offered.

So an invoice had to be compiled showing a price (\$500 per m³) which was more in line with the price quoted by the Amsterdam APS in the second instance, instead of the price which Compagnie Tommy actually charged (\$35 per m³). Trafigura in all probability knew that the low price it had paid in Abidjan would be construed by the public at large as proof of knowledge that the waste would not be correctly processed. The internal correspondence would seem to confirm that Trafigura tried to disguise this by producing a false invoice.

Deliberately taking a risk in respect of injury to people and the environment by lying about the true nature of the waste

- V. We have explained above (paragraph 14) that Trafigura evidently concealed the true nature of the waste in La Skhirra (Tunisia), where the instruction plainly read ‘KINDLY DO NOT, REPEAT DO NOT DISCLOSE THE PRESENCE OF THE MATERIAL TO ANYONE AT LASKHIRA AND MERELY DECLARE IT AS TANK WASHINGS’. The same thing happened in Amsterdam and, probably, in Lagos, Nigeria. This evidently in an attempt to get rid of the waste without worrying about the consequences of unloading hazardous waste and without the processor knowing the risk, thus deliberately and knowingly taking a risk as to serious consequences for people and the environment, certainly in the third-world countries where the waste was offered.

Incomplete information to the Tunisian authorities after the incident at La Skhirra

- VI. After the accident in La Skhirra, Trafigura decided to delete the passage in the report for the government in which a (possible) explanation is given for the noxious gases released which caused people to fall ill (see above, paragraph 12). Evidently in an attempt to withhold information which might result in liability on the part of Trafigura.

Trafigura discussed misleading the authorities in Lagos, Nigeria

- VII. After an aborted attempt to get rid of the waste in Lagos (Nigeria), Trafigura concluded that Lagos did not have the correct facilities for processing the waste. Trafigura then nevertheless considered transshipment to another ship, either outside Nigerian waters or in Togo, in order to offer it again for processing under another name in Lagos (see paragraphs 17, 18). Ultimately this did not take place.

Trafigura accused of bribing victims

- VIII. Trafigura has been accused by several Ivorian citizens who were involved as victims in the UK class-action suit of attempting to bribe them in exchange for giving a testimony favourable to Trafigura. This is evident from several victims’ statements dated March 2009, several of which are being submitted as **appendix 29**. As a result, Trafigura and its consultants were ordered by the High Court on 23 March 2009 to

cease communication with any of the claimants (see **appendix 30**). Trafigura's lawyers, McFarlanes, deny ever having accepted or given any financial compensation to any claimants in the UK action for damages and state that they acted correctly and lawfully throughout. As part of the settlement reached in the UK, these accusations of bribery have also been settled amicably.

Trafigura intended to mix a portion of the toxic waste with petrol

- IX. Internal Trafigura documents reveal that the company intended to dump half of the waste in Amsterdam, and considered mixing the remaining half of the toxic waste with petrol (**appendix 31** under b and **appendix 32** under 19, lines 9 and 10), evidently to sell it on as fuel, presumably on the African market. As before, the company did not care about the impact this would have on the environment.

Trafigura director denies liability during hearing

- X. The fact that Trafigura wrongfully does not accept any responsibility and it wrongfully pretends it is not to blame for anything is illustrated by the comment from Trafigura director Dauphin during his interrogation by the Ivorian authorities on 28 September 2006. He was asked the following: "*Who is ultimately responsible for this tragedy in Ivory Coast?*" Dauphin replied: "*It is the Trafigura company and to a certain extent Mr Marrero who is entirely responsible for these deeds*" [translated from French] (**appendix 33** last paragraph).

The above demonstrates that Trafigura has been misleading the public by suggesting in the Advertisement that it is an innocent victim of a 'trial by media' and by making it appear as though it has been exonerated following a UK court decision.

e) The Advertisement wrongfully states that Trafigura has always sought to discharge its economic and social commitment in the West African region;

50. The Advertisement states the following: '*Trafigura [regrets] the inconvenience and distress which the incident involving the Probo Koala has caused the local population. Trafigura has always sought to discharge its economic and social commitment to the West African region*'. The course of action followed by Trafigura in West (but also in North)

Africa and described above illustrates that Trafigura is not exactly a model of social commitment in the West African region. This applies, for example, to the way in which Trafigura tried to unload the waste in Tunisia and Nigeria (see above, paragraph 49 under V, VI and VII), as well as its course of action in Ivory Coast (see paragraph 49 under III and IV, amongst others) and the accusations of bribery of Ivorian victims (see paragraph 49 under VIII).

51. Trafigura has also paid compensation to the Ivorian government in order to avoid civil and criminal proceedings – and with it transparency for the population of Abidjan. Moreover, Trafigura has neglected to consult victim organisations about the way this compensation would be put to use and has not verified whether the money actually ended up with the victims (appendix 17, § 64). In addition, Trafigura has always entirely blamed the small Ivorian Compagnie Tommy for the Probo Koala affair in Ivory Coast, whose owner now sits out a prison sentence of 20 years in Ivory Coast. Without detracting from the role played by Tommy, the facts show that Trafigura should also acknowledge liability.

Trafigura is wrongly hiding behind Compagnie Tommy

52. As a world player with a turnover of billions, Trafigura should have exercised the necessary due diligence. In the first place, it should have complied with international and European legislation on the export of hazardous waste, as the waste would then never have ended up in Africa. Apart from this, it should have ascertained, once the waste was in Ivory Coast, that Tommy possessed the correct knowledge and facilities and that the processing of the waste would take place in facilities with the correct equipment, certainly once Trafigura knew that these facilities were scarce. This also applies in particular to a poverty-stricken country such as Ivory Coast, where the financial, legal, technical and institutional infrastructure to monitor waste shipments, and prevent illegal imports, let alone process toxic waste safely is lacking, as confirmed in the UN report (appendix 17, paragraph 75).
53. Trafigura invokes the excuse that Tommy possessed the correct licence. This is not correct. The point that Trafigura continues to give the impression that the waste is ordinary ship's waste arises again here. Tommy had indeed obtained a licence on 12 July 2006, but the licence only applied to emptying, servicing and bunkering ships. These activities are also listed on the Tommy letterhead (appendix 28): '*spécialiste dans le*

vidange, l'entretien en le soutage de navires'. In other words, Tommy had a licence and states in its own letterhead that it was active in processing normal ship's waste. Tommy did not have a licence for processing the hazardous chemical waste that Trafigura entrusted to Tommy and has never suggested to Trafigura that it did have such a licence.

54. The single fact that Tommy had a licence, even if it would have provided for processing the hazardous waste offered by Trafigura, does, moreover, not mean in a country such as Ivory Coast that Trafigura could therefore trust that everything would turn out well (appendix 17, paragraph 75). Tommy had also pointed out to Trafigura that it would dump the waste in Akouedo (appendix 28). This is a well-known rubbish tip east of Abidjan. It is certainly not a location of which Trafigura could surmise that it would possess the correct facilities to process the hazardous waste. The only statement by Tommy itself that this location was '*properly prepared to receive any type of chemical product*' did not change anything. It was Trafigura's responsibility to make certain of this. The fact that these reassuring words by Tommy could be found in a hand-written offer (appendix 28) should have raised the necessary question marks at Trafigura, not least because the price for processing demanded by Tommy was too low and it is not exactly obvious that there are facilities in Abidjan where every type of chemical waste could be processed. There is probably no single installation in the world which could process *any* type of chemical waste.

55. The recent UN report in the Probo Koala affair confirms that Trafigura has not fulfilled its obligations by virtue of due diligence (duty of care in relation to the prevention of negative effects on human rights) in Ivory Coast (appendix 8, § 68-84). Trafigura should have at least ascertained that Compagnie Tommy was actually able to process the waste responsibly (appendix 8, § 81). Not for nothing did Trafigura director Dauphin acknowledge that the responsibility for the tragedy is entirely Trafigura's during his interrogation in Ivory Coast (see paragraph 49, under X).

f) The Advertisement wrongfully suggests that 20 independent experts concluded that the Probo Koala waste could not have caused death or other injuries;

56. The Advertisement refers to an "investigation" (third paragraph) of the effects of the dumping by 20 independent experts. The 20 experts to which Trafigura refers are experts

who each individually have conducted an investigation, as far as Greenpeace is aware. In so far as is known to Greenpeace, there is no joint investigation, conclusion or vision of these experts in existence. Let alone that these experts would have jointly concluded that the ship's waste from the Probo Koala could not have caused death or serious injuries (explained above, paragraph 44), as seems to wrongfully follow from the second and third paragraph of the Advertisement.

57. Half of the experts were also appointed by Trafigura itself, and half by Leigh Day. This type of construction is set up precisely when parties assume that the experts appointed by the other party are insufficiently independent. There is therefore no question of 20 *independent* experts. We are dealing with 10 partial experts appointed by Trafigura and 10 partial experts appointed by Leigh Day. Nor have these 20 experts ruled that the waste of the Probo Koala could not have caused death or serious injuries (see also paragraph). 44). Again Trafigura attempts to deceive consumers in an attempt to sell the settlement with Leigh Day at which it arrived at as the truth.

Misleading as referred to by article 8 NRC

58. Based on article 8.2, NRC, an advertisement is misleading when it 'is accompanied by inaccurate information and leads the average consumer, or can lead the average consumer, to make a decision in relation to a transaction which they would not have made otherwise'. The Advertisement contains several factual inaccuracies. In the opinion of Greenpeace, Trafigura aims with these inaccuracies to create sympathy amongst consumers, businesses or private persons, and so to influence their decisions on products, or the purchase of products offered by Trafigura. Consumers, either business consumers or otherwise, might decide to buy products or services from Trafigura based on the Advertisement, while they would not have done so earlier, as they, briefly – and wrongfully – might think that the judge has ruled that Trafigura is not responsible for any injury to the victims in Ivory Coast and Trafigura has been completely exonerated in the *Probo Koala* affair. The Advertisement is therefore misleading as referred to in article 8 NRC.
59. The United Nations ruled earlier that Trafigura should show restraint in its approach to the media (appendix 17, § 84):

'...the Special Rapporteur is greatly concerned by reports that the company has filed or threatened to file lawsuits against various civil society and media institutions that have reported on the Probo Koala incident in a critical manner. Such lawsuits may have the effect of stifling independent reporting and public criticism. In this regard, the Special Rapporteur considers that Trafigura, as a public figure in this case, should show restraint'

Request

60. In view of the above, Greenpeace requests that the Advertising Code Commission rule that the Advertisement placed in various Dutch newspapers on 30 September 2009 by Trafigura is misleading as referred to in article 8 NRC. Greenpeace requests the Advertising Code Commission also to make a public recommendation in which this ruling is made public, and to publish its ruling.

Yours faithfully

J.P. van den Brink
lawyer

TRAFIGURA

Ship's waste from the Probo Koala could not have caused deaths or other serious injuries - confirmed by the High Court in London

30 September 2009

The High Court in London endorsed last Wednesday, 23 September, the settlement arrived at between Trafigura and approximately 30,000 inhabitants of Ivory Coast.

This means that both the Judge and the lawyers of the claimants have agreed with Trafigura's position that the ship's waste from the Probo Koala could not have caused deaths or serious injuries. They clearly stated that the waste could have caused at worst a number of short-term, flu-like symptoms and tightness of the chest.

The conclusion, included in a Joint Statement, follows thorough analysis by 20 independent experts. This is by far the most complete investigation into the events around the waste from the Probo Koala in Ivory Coast in August 2006. The experts have a legal duty in respect of the High Court to report to the best of their ability. At the endorsement of the Joint Statement by the Court, Mr Justice MacDuff confirmed that:

"I know from the (court) papers that the experts were quite clear that the waste could not give rise to the sort of symptoms and illnesses which were being attributed to the waste in various media. I wish to underline once more that based on the court papers I consider the Joint Statement 100% truthful."

Trafigura regrets that the reporting of the case has often degenerated into a "trial by media" and has consistently pointed this out to the media. From day one, the company has maintained that serious injuries to health could not have been caused by the waste from the Probo Koala. After all the inaccurate reporting in this matter, Trafigura is pleased that the Judge has confirmed our position.

Trafigura will pay 1,140 euros (converted) per claimant. This does not mean that it acknowledges liability. Nevertheless, Trafigura regrets the inconvenience and distress which the incident involving the Probo Koala has caused the local population. Trafigura has always sought to discharge its economic and social commitment to the West African region and this settlement is fully consistent with that philosophy.

For more information, please visit www.trafigura.com

Trafigura is a leading international trading company specialising in petroleum, minerals and

metals. The company has 60 offices in 42 countries and head offices in Amsterdam, London and Lucerne. Trafigura's main trading activities comprise delivery and transport of crude oil, oil products, metals (including copper, lead, zinc and aluminium), metal ore and concentrates.