

PROCESS: Nbr. 001.2004.1.046185-6

PETITIONING: CASAVERDE HORTI LTDA AND NELSON BATISTA TEMBRA

REQUESTED: COMPANHIA VALE DO RIO DOCE - CVRD

Famous Magistrate,

CASAVERDE HORTI LTD and **NELSON BATISTA TEMBRA**, properly identified in the presents solemnities, they knock on the doors of this judgement with the **ACTION OF OBLIGATION OF DOING WITH COMPENSATION FOR MORAL DAMAGES** against the **COMPANHIA VALE DO RIO DOCE - CVRD**, for the reasons and of right below related:

They allege in their exordial that, on June 1, 2003, they were contracted by VERA CRUZ MINING LTD, company happened by the now requested Companhia Vale do Rio Doce - CVRD, with the aim of elaborating Plans of Environmental Control -PEC's regarding the plowing and improvement of the bauxite ore, of the Paragominas Bauxite Project, included the line of transmission of energy of 138KV and the access Highway to the Plateau Miltônia 3, as well as the Plan of Environmental Control regarding the pipeline for the transport of the ore from the Plateau Miltônia 3 to the facilities of ALUNORTE, in Barcarena - PA, under taskwork regime at global price.

It happens that the Companhia Vale do Rio Doce - CVRD, illegally, it altered the technical documents elaborated by the petitioners, using them close to for the concession of environmental licensing by the Executive Secretariat of Science, Technology and Environment - SECTAM.

In date of September 9, 2003 it was given by the authors Plan of Environmental Control - PEC to CVRD, on the plowing and improvement, having been registered the Annotation of Technique Responsibility -ATR together to Regional Council of Engineering and Architecture - CREA/PA on behalf of the authors and, CVRD alleging period noncompliance in the execution of two PEC's considered the contract canceled in November 18, 2003, canceling the elaboration of PEC on the pipeline. The authors affirm that strange factor, occult or explicit inopportunately they served as excuses for the breaking of the contract, contradicting the logic and the common sense, once it would be impossible the conclusion of the works to obtain instalation license inside of the foreseen contractual period, since until August 31, 2003, maximum period granted by the contractor, the Previous License 011/2004, regarding the plowing and improvement still had not been liberated by SECTAM, that only coming to happen around eight months later, in March 26, 2004. They question the authors as how they could conclude PEC inside of the established period, without the knowledge of the conditions that are established in the previous license, which execution determines the expedition of the Instalation License, as it establishes the art. 8th. of the Resolution 237/1997, of CONAMA (National Environmental Council).

In June 3, 2004, the authors became aware that CVRD had received License of Installation 067/2004, with validity from May 26, 2004 to May 25, 2005, for the infrastructure installation for plowing and improvement of bauxite ore in Paragominas/PA. The authors, through their endeavor close to SECTAM, they became aware that one of the integral plans of PEC, in other words, the Plan of Recovery of Degraded Area - PRDA it had suffered alterations and technical omissions in relation to

the original content registered in CREA/PA, without any participation of the authors and that the reverse would have maintained the authors' name close to in the constant modifications the franchiser organ, violating the constant dispositions in the Brazilian Federal Law 5.194/66.

Likewise, they allege the authors that the maintenance of their names in the modifications in the PRDA, without their participations and approvals, they turn them responsible civil, penal and administratively for any irregularities, in agreement with the Resolution 237/97-CONAMA, what configures fraud on the part of CVRD, in the intention of obtaining Installation License from SECTAM.

As right the authors invoke the art. 1st, III, and art. 5th, items V and X, of the Federal Constitution, and art. 186 of the Civil Code.

At the end, they request the premature protection, with base in the art. 273, interruption I, of CPC, to determine the suspension, or cancellation of the License of Installation 067/2004 close to SECTAM, as well as the fine payment, in the amount of R\$ 2.800.000,00 (two million and eight hundred thousand Reais), as compensation for moral damages.

The Companhia Vale do Rio Doce - CVRD, in its reply, preliminarily, alleges that there is defect in the representation of the legal entity CASAVERDE HORTI LTD, because the social contract of the same is not enclosed to the solemnities, in way to verify who granted rights to Mr. Nelson Tembora of representing her, requesting the feather of nullity of the process, whether the defect is not cured.

It alleges although the authors' request concerning the condemnation of CVRD to the cancellation or suspension of the License of Installation is juridically impossible for being the plaintiff leaves illegitimate to represent in the lawsuit, as well as the authors are not competent to cancel or to suspend the sent license, but the environmental organ, in the terms of the art. 19 of the Resolution of CONAMA 237/97, still requesting the ineptitude of the initial petition, in the molds of the art. 295, items I and II, of Civil Code.

They still invoke the Code of Mining in its art. 87, that it impedes that it is hindered, through lawsuit, the research pursuit or it cultivates.

In relation to the compensation pled by the authors, it adduces the reverse that the national juridical ordering doesn't check that right the legal entity, when the violation elapses of actions contrary to the intellectual property, of which they are species the industrial property and the copyright, sending to the juridical impossibility of the request and illegitimacy activates ad cause, requesting the reverse the extinction of the process without the judgement of the merit.

It affirms the reverse that in the developed Plan of Control in the environmental work - PEC, Mr. Nelson Tembora alleges to be his, it is not, at least with the exclusiveness as he comes, but fruit of a technical team, of several professionals, but responsible just for a part of a great context.

That the company Vera Cruz Mining (Mineração Vera Cruz), happened by CVRD, it introduced the author Term of Reference for Elaboration of the Plan of Environmental Control and that that TOR referred, in full detail, the content of the Plan of Environmental Control, being constituted a document, destined to assist a certain

project, concluding that author Nelson Tembra cannot cogitate originality to PEC, because several companies would be capable to assist the requests of the Mineração Vera Cruz, with base in TOR.

The State of Pará started to integrate participates in it as litisconsorte, alleging in its defense that State Council of Environment - COEMA it ignores any relative irregularity to the perpetrated environmental licensing, as well as any animosity by chance existent among the litigant parts.

It continues, adducing that SECTAM is the competent environmental organ to do the licensing and, in agreement with the art. 225 of the Federal Constitution, it competes to the State and the society the protection to the environment for present and future generations, having the Law 5.457/88 defined COEMA (...), constituting it as organ legitimacy holder to treat of the subject in screen.

"In that way, and to ratify the responsibility of CVRD for the revisions and adaptations made in PEC's, what exempts of any responsibilities the professionals previously involved in the activity, CVRD comes to present in this action, the Annotation of Responsibility Technique - NTR 234557, of the professional Ana Brígida Figueiredo Cardoso, responsible for the Coordination of the works of revision of the Plans of Environmental Control of the plowing and improvement of the Project of Bauxite of Paragominas."

Only after having granted the license, in the date of June 1, 2004, agronomist engineer NELSON BATISTA TEMBRA, in the quality of Director of the CASAVARDE HORTI LTD, requested copy of PRDA for SECTAM, through the Process number 158423/2004, with base in contamination of his computer science system, for virus, the one that did lose the referred document, being the same assisted after verbal authorization of CVRD.

He continues the nobleman Procurator of the State, affirming that on the June 29, 2004 CVRD presented NTR number 234557, of the professional Ana Brígida Figueiredo Cardoso, with date of contract of March 01, 2004, for the coordination of the works of revision of PEC during the month of March 2004, in other words, one month before the date of protocol of instalation license request for CVRD, therefore, referred lady was already responsible for the same ones, before the supposed alteration allegations formulated by the author of the demand.

In their conclusions he requests that the demand is judged unfounded, in what it concerns the Obligation of Doing regarding instalation license 067/2004 cancellation, by SECTAM.

SECTAM, through a well elaborated report of the plowing of Mrs. Socorro Flores, learned Juridical Assistant, in conclusion adduces:

I "suggest, of that it sorts out, that this Organ awaits that the subject is decided in extent of Regional Council of Engineering, Architecture and Agronomy-CREA/PA, so that we can, with a larger group of elements, to decide concerning the granted license, besides, applying to the case the art. 19 of the Resolution 237/1997 of CONAMA, which it treats of the possibility of the environmental organ in to suspend or to cancel sent licenses".

Noble Magistrate,

It is incontrovertible that the project of mining object of the present judicial work it is of addition importance for the economical development not only of the area in that it is being installed, but above all for the State of Pará. However, necessary also are made some observations concerning the form as the project behaved to obtain the License of Installation, in energy up to 25.05.05.

It is of good reminder to stress that, at priori, CVRD was used of the professional seal and NTR of the petitioners on top of plans modified without the due authorization, seeking the obtaining of **Installation (IL) License**, as we will try, along the present work, to demonstrate.

The petitioners, on June 01, 2003, were contracted by the Vera Cruz Mining, for the elaboration, under regime of global taskwork, of the Plans and Programs of Environmental Control - respective PEC's to the Studies of Environmental Impacts - EIA's, aiming at the obtaining of the Licenses of Installation - IL's, regarding the plowing, improvement and pipeline, to know: Plan of Management of Hydro Resources - PMHR, Plan of Management of the Quality of Air - PMQA, Plan of Management of Solid Residues - PMSR, Plan of Emergency - PE, Plan of Promotion to Local Development - PPLD, Plan of Environmental Education - PEE, Program of Social Communication - PSC, Program of Creation and Management of Units of Conservation - PCMUC, Plan of Recovery of Degraded Areas - PRDA and Plan of Deactivation - Plan of Closing.

On September 25, 2003, the petitioners ended and they made the delivery to MVC of the final version of PCA, regarding the plowing and improvement, proceeding to the registration of the Annotation of Technical Responsibility - ATR (Main) n. ° 216.122, of October 15, 2003, and of the respective of Co-responsibility ones of numbers 245.069, 223.058, 245.070 and 245.287, close to Regional Council of Engineering, Architecture, and Agronomy - CREA/PA, of conformity with the art. 1st. of the Federal Law number 6.496/77, that it extols like this.

Art. 1st - every contract, writing or verbal, for the execution of works or installment of any professional services regarding the Engineering, to the Architecture and the Agronomy are subject to the "Annotation of Technical Responsibility" (ATR). (we highlighted)

Art. 2nd - ATR defines for the legal effects the technical responsible for the enterprise of Engineering, Architecture and Agronomy.

Given the plans the VERA CRUZ MINING alleging noncompliance of periods in the elaboration of two PEC's, it considered canceled the contract with the petitioners, canceling the elaboration of PEC regarding the pipeline and applying fine for delay in the delivery of PEC on the plowing and improvement. It was established in the clause 6th of the referred document, however, that CASAVERDE would commit, until the expedition of the License of Installation, to redo or to correct, to their expenses, the works or portions of these that they had been executed with mistake or technical imperfection, verified by the VERA CRUZ MINING or for the competent franchiser organ.

On April 27, 2004, the Companhia Vale do Rio Doce turned public, through publication in "Diary of Pará", that requested, on April 19, 2004, to the Executive General office of

Science, Technology and Environment of the State of Pará - SECTAM/PA the License of Installation for extraction and improvement of bauxite ore in the municipal district of Paragominas. On June 03, 2004, it turned public that received on May 26, 2004 the License of Installation 067/2004, with validity from May 26, 2004 to May 25, 2005, for infrastructure installation for plowing and improvement of bauxite ore in the municipal district of Paragominas.

Aided in art.22 of the Law 5.194/66, that it assures the authors of the project or their representatives the right of accompanying the execution of the way work to guarantee its accomplishment in agreement with the conditions, specifications and other technical details in it established; and for the exposed reasons in the requirement close to SECTAM/PA, the authors had the unpleasant surprise of verifying that the Plan of Recovery of Degraded Areas - PRDA, on the plowing and the improvement, suffered significant alterations and technical omissions in relation to the original content registered in CREA/PA, without the authorization or participation executes of the same ones, and, still, that the Companhia Vale do Rio Doce maintained in the works recorded close to the Environmental Organ the indication of the authorship and technical responsibility of the petitioners in the instruction of the process that originated the expedition of the License of Installation for the plowing and improvement. Like this, the Companhia Vale do Rio Doce violated, in a flagrant way, emanated dispositions of the Federal Law 5.194/66, that regulates the exercise of Engineer's professions, Architect and Engineer-agronomist, verbis:

Art. 17 - the rights of authorship of a plan or project of Engineering, Architecture or Agronomy, respected the expressed contractual relationships between the author and others interested, they belong to the professional that elaborating. (We highlighted)

Art. 18 - the alterations of the project or original plan will only be able to be made by the professional that has elaborated it. (We highlighted)

Only paragraph - being impeded or refusing the author of the project or original plan to render his/her professional collaboration, proven the request, the alterations or modifications of them can be made by other qualified professional, to whom the responsibility will fall for the project or modified plan.

The alterations of any projects or original plans of PEC could only be made by the team of the petitioners, so that their technical responsibilities were maintained. In case they were legally impeded, or refusing themselves to render professional collaboration, once the Companhia Vale do Rio Doce - Mineração Bauxita of Paragominas - it proved requests of technical modifications in full detail, in writing, such content alterations could have been made by any other qualified consultancy, to whom the responsibility would fall for the projects or modified plans. In no hypothesis some could have proceeded the modifications without consent of the petitioners, in the way that they proceeded, recording the request of the License of Installation in SECTAM without it was given to them previous knowledge on the content of the final version of the PEC's regarding the plowing and improvement, and, at the same time, to have maintained ATR of the petitioners in the instruction of the process, until the expedition of the license. In the reality, it is verified that the License of Installation was granted with base in the authors' of the present action original ATR and that, contradicting what the cult Procurator of the State, Dr. Ibraim José Rocha, the geologist's mentioned ATR was authenticated mechanically **only 90 days after the date of expedition of the mentioned License of Installation.**

In agreement with the art. 8th, only paragraph, of the Law 5.194/66, the legal entities and state organizations can exercise the activities and professional attributions governed by the Law 5.194/66, except for the exclusive ones for natural persons, but only with the participation it executes and the professionals' declared authorship legally qualified and registered, and that didn't happen, as it will be demonstrated, to proceed.

Approved by SECTAM with the modifications proceeded by CVRD, PRDA that subsidized IL 067/2004 expedition for the plowing and improvement doesn't possess juridical value, position that doesn't contain the authors' signatures, contradicting the Law 5.194/66, verbis:

Art. 14 - in the graphic works, specifications, budgets, opinions, decisions and actions judicial or administrative, it is obligatory, besides the signature, preceded of the name of the company, society, institution or the one that it interest, the explicit mention of the professional's title that signing and of the number of the card referred in Art. 56.

In modified PRDA it doesn't consist not even the own CVRD technicians' signatures, much less the authors'. It is something apocryphal. That in original PRDA (elaborated by the authors) there is the approval leaf, with all the participants' signature, according to norm ABNT NBR 14.724.

There would not be proof need, on the part of CVRD, of any request in writing to CASAVERDE about content modifications in the plans and programs of PEC of the plowing and improvement. It would be enough, in PRDA that subsidized the expedition of the installation license by SECTAM/PA, that they proved Norm ABNT'S execution NBR 14.724, mentioned above, that it instituted the Leaf of Approval, to be put soon after the leaf of face of the technical works after having corrected and approved, should be constituted by the authors' of the work name, title of the work and subtitle, nature, objective, name of the institution the one that it is submitted, concentration area, approval date, name, title, signature of all the components and institutions the one that is adopted, as it consists in the original version of PRDA, registered in CREA/PA, by the authors.

Joining with the intelligence now married, the CREA - PA, of objective and clear form, in the conclusion of its opinion, directed through the Occupation number 150/SECAM/ASTECC/04, of December 22, 2004, like this asserts:

- 1. TO CONSIDER NULL ART 234557, IN THE TERMS OF THE ITEMS 1 AND 2 OF THE ARTICLE 9TH. OF THE RESOLUTION 425/98 OF CONFEA;**
- 2. TO SUE THE PROFESSIONAL GEOLOGIST ANA BRÍGIDA FIGUEIREDO CARDOSO FOR, VIOLATION TO ART. 6TH, B, OF THE LAW 5.194/66, FOR MAKING RESPONSIBLE TECHNICALLY FOR INCOMPATIBLE ACTIVITIES WITH HER PROFESSIONAL ATTRIBUTIONS, CHARACTERIZING EXORBITANCE OF ATTRIBUTIONS. (WE UNDERLINED)**
- 3. PLUS: THE OWN CREA/PA, IN THE ITEM 6TH DECIDES TO "MAKE DENOUNCES TO THE PUBLIC PROSECUTION SERVICE ABOUT THE OMISSION OF MANIFESTATION OF SECTAM CONCERNING THE REQUESTS OF THIS CREA/PA, CONTAINED IN THE OCCUPATIONS DIRECTED TO THAT GENERAL OFFICE."**

That comes to the encounter of the need stated by the intelligent Juridical Assistant of SECTAM, that, to the fls. she affirms "I **Suggest, that out of these sorts of things that this Organ** (complete, SECTAM, in the request of suspension of the License of Installation) it **awaits that the subject is decided in extent of Regional Council of Engineering, Architecture and Agronomy-CREA/PA, so that we can, with a larger group of elements, to decide concerning the granted license, besides, applying to the case the art. 19 of the Resolution 237/1997 of CONAMA, which treats of the possibility of the environmental organ in to suspend or to cancel sent licenses"**.

Now, judging nobleman, the opinion of the CREA/PA could not be different, because, in agreement with the legislation, CVRD could not register a second main ATR, because any request is not demonstrated by the contracting company nor the refusal or agreement of the contracted for the procedure of the technical modifications. Therefore, CVRD could not also register co-responsibility ATR's, for the authors they have not been notified to, about it, like this, CVRD could not register co-responsibility ATR linked the authors' of the present action main ATR.

Besides, ATR 234.557 was authenticated mechanically by CREA/PA on June 28, 2004, in other words, about three months after the expedition of the Environmental License of Installation - I.L 067/2004 on March 26, 2004, for the plowing and improvement, contradicting norms of the own environmental organ, that they condition the liberation of the environmental licenses to the previous presentation of the respective Annotations of Technical Responsibility - ATR's.

In synthesis, the process of environmental licensing of installation of the plowing and improvement of the Paragominas Bauxite Project was instructed by plans and programs modified without the authors' expressed approval, "**validated**" by an ATR without juridical value, registered inopportunistly, for professional without specific attributions, according to recognition in decision of the competent organ (CREA/PA).

By motivated decision, in agreement with Art. 19 of the Resolution CONAMA 237, to SECTAM/COEMA fits to suspend or to cancel IL 067/2004, put that happened to instant violation of legal norms and the omission or false description of relevant information that they subsidized the expedition of the License of Installation, for the plowing and improvement. In synthesis, there was the practice of a true "environmental fraud", in other words, CVRD obtained the advantage of the expedition of the License of Installation for the extraction of the bauxite ore, using the registration and the authors' professional prestige, possibly inducing SECTAM "to the mistake", in a fraudulent way.

The true "festival of irregularities", in the process of environmental licensing, demonstrates the intention of the mining company of exempting from fairer compensations to the State of Pará, for the extraction of the mineral resources, probably, for they constitute actions that request larger financial payments.

However, as fiscal of the law, we cannot ignore or to be connivent with the improper use and the technical responsibility of somebody else, inputing the authors to administrative, civil, penal and criminal sanctions for environmental problems of the implantation and operation of the enterprise.

Among the compensations foreseen in the environmental studies, the ones of socioeconomic nature are the ones that request larger investments. Actions that are covered of a very deliberate and even "romantic", character, for naive or

unknowledged minds, they give in the time to a true sabotage of the perspectives of progress of a society. Great part of the true environmental problems elapses of the development lack and the worst pollution is the poverty.

Everything indicates that the authors were ignored because they proposed more advantageous and beneficial alternatives to the State of Pará, with the generation of more job and income, consequently, with the elevation of the socioeconomic level and better life conditions. When we compare original PRDA registered under the authors' technical responsibility with PRDA modified by CVRD, that subsidized the liberation of the License of Installation for plowing and improvement, it is easy to conclude that, in this last one, the proposed technology - and that it was approved by SECTAM/COEMA - it means to assume that, after the removal of the ore, the recomposição of the vegetation will be made by the own nature, with little or almost no investment of the entrepreneur, and without inserting the already altered area by the mineral extraction to the productive section place in a maintainable way, through rational plantings, larger movement of materials and inputs, more circulation of taxes, and through the use of forest species with commercial value, that they were able to and they should have economical destination, besides in the production of the vegetable coal, raw material of which CVRD needs so much. In synthesis, the maintenance of original PRDA that had been adulterated in the licensing process it would mean the obligation to the CVRD in investing about of R\$ 25,7 million for the recovery of areas degraded by the bauxite extraction in the Plateau Miltônia 3. But they don't want that. They prefer to use the same politics until today, which is, to act voluntarily, in the base of the "only give if they want", because what doesn't consist in the process of environmental licensing, the State doesn't have legal prerogative for collection as compensation, as we see today with the naked eye, in the great mining projects of Pará.

The entrepreneur is entitled of proposing measures, and the public power the obligation of evaluating, to question and to demand compensations. In Pará, in our interpretation, what has been happening - and in the most recent case it happened with the Projeto Bauxita de Paragominas - it is that neither COEMA, that has wide representation in the civil society, nor the own population, in the public audiences, they have been removing advantage of those dispositions of the environmental law. The final document, with diffuse recommendations, ends up really being the one presented by the mining company and previously prepared under its direct orientation. Then, when they seek - they are white or Indians - to look for compensations, what they looks for, actually, are inexistent rights, since out of the parameters that expressly condition the environmental licensing, all and any action of the "volunteer" company is considered "of free initiative."

I believe that that sad practical reality demonstrated by our state organs of control and implementation of agrarian and environmental politics, added the stranger undue and criminal appropriation of the Project and professional seal of the petitioners, it was the movable element, the reason of the Civil Action of Obligation of Doing with compensation for moral damages, now analyzed. It is sad the verification that, differently that it happens in the State of Pará, in any other place or civilized country, probably, there would not be the need of lawsuit proposition, position that the competent environmental organ would already have, of occupation, in the extent of their attributions, assigned of adopting the reasonable legal providences.

Now, cult magistrate, as it is of Your learned knowledge, the mineral resources constitute patrimony of the Federal Union (Federal Constitution, Art. 20, IX) and their

exploration, for thirds, depends on authorization or state concession (Federal Constitution Art.156 Paragraph 1st);

The Union, States, Federal district and the Municipal districts possess common competence to register, to accompany and to supervise the concessions of research rights and exploration of hydric resources and minerals in their territories (Federal Constitution Art. 23, XI);

As well as it is competitive competence of the Union, States and Federal district to legislate on forests, its hunts, fishes, fauna, conservation of the nature, defense of the soil and natural resources, protection of the environment and control of the pollution (Federal Constitution Art. 24, interruption VI);

Federal Constitution/88 shelters with itself, in the chapter of the Economical Order, founded in the valorization of the human work and in the free initiative, the warranty to all of the existence deigns, according to the dictates of the social justice, observed the principles of the social function of the property, defense of the environment, reduction of the regional and social inequalities (Federal Constitution Art. 170, III, VI and VII);

In normative agent's quality and regulator of the economical activity, the State owes - or in the present case, it would owe - to exercise, in the form of the law, the fiscalization functions, incentive and planning, being this decisive one for the public and indicative section for the private section (Federal Constitution Art. 174);

It is not unnecessary to affirm, even knowing about Your full knowledge that all have the right to the ecologically balanced environment, well of common use of the people and essential to the healthy life quality, being imposed to the Public Power and the collectivity the duty of defending it and to preserve it for the present and future generations (Federal Constitution Art. 225), and for the witnessed, until then, there is a widespread irresponsibility of the fiscalization organs and control of the environmental subject in the State of Pará;

In that reasoning path, it causes me strangeness and disturbance the opinion of the plowing of the worthy and intelligent Procurator of the State, Dr. Ibrahim José das Mercês Rocha, that, in the situation in I comment on, he concludes requesting "that the demand is judged unfounded, in respect the Obligation of Doing, regarding LI 067/2004 cancellation, by SECTAM". He excels, like this, for the uncompromising defense of the irresponsibility of the government organs, in the treatment of the environment, as well as he shares with that true "environmental undue appropriation", perpetrated by the Companhia Vale do Rio Doce - CVRD, when, in an illegal way and who knows criminal, it has made use of a Plan of Recovery of Degraded Area, integrant of the Plans and Programs of Environmental Control, being exempted from the concession of fairer compensations to the legitimate interests of the State.

The reverse alleges, in its reply, the absence of social contract in the solemnities, what turns the action inept. But, on pages.453/57 and page 12, they present the social contract and the public power of attorney, respectively, giving legitimatio ad causas to present action. Besides, it affirms the reverse that developed in the Plan of Environmental Control "in the work - PEC, Mr. Nelson Tembra alleges that it is his, it is not, at least with the exclusiveness as he comes, but fruit of a technical team, of several professionals and yes responsible for a part of a great context". In that argument, we observed that, in the contract signed between the Casaverde and the

Mineração Vera Cruz - pages. 15/24, in none of the terms the transfer of the copyrights is established for the contracting mining company. On the other hand, on the pages 459/60 and 462/3, the services rendered contracts between the authors and the joint authors of PRDA (Samuel Almeida and Luiz Gonzaga Costa), in the clause 6th., paragraph 1st., it was established: It is "included in the price above agreed the copyrights and/or of reproduction that eventually belong to the contracted, and mentioned rights pass to be of exclusiveness of the contracting party, CASAVÉRDE HORTI LTDA", complete.

Contradicting the affirmative of the reverse that the company introduced to the author Term of Reference (...), that that TOR referred in full detail the content of PEC (...)", it is observed that the term of reference it is not anything besides an itemization of the group, that it should be detailed thoroughly in the elaboration of the plans for best to establish the compensations to the State, according to art. 11, of the Resolution 237/97, of CONAMA.

More: It can be verified to the page. 133, in adulterated PRDA, in the picture of the responsible technical team, the indication of the agricultural engineer's Nelson Tembra name as responsible for the "recovery of degraded" areas. Also the indication of the CASAVÉRDE is observed as responsible company by the elaboration of PEC.

As to the allegation that the compensation pled by the authors, it adduces the reverse that the national juridical ordering doesn't check that right to the legal entity (...)", as costs legis I cannot avoid of drawing brief considerations.

Imperious it is to recognize that Brazil is one of the few countries that possesses the institute of the moral damage in its Constitution. Like this, the art. 5th., V and X, of our Political Letter, houses, in an unquestionable way, the admission of the moral damage, when it protects the intimacy, the private life, the honor and the people's image.

We can consider moral damage as every person's suffering, resulting from lesion to strange rights to the patrimony, with reflexes of juridical relationships with economical value, such which lesions to political rights, to the honor, to the freedom, to the name, etc.

The moral damage, second some, I harm immaterial or extrapatrimonial, comes, along the time, reaching prominence in the doctrinaire scenery and jurisprudencial, as something relevant and of fundamental importance in the sphere of the people's civilian life.

Well then. I score valuable, that it won force after the edition of the Political Letter of 1988 and that certainly could be used against a specific type of exacerbation of the power - the humiliation (broad sensu) and moral coercion exercised on the people in economical position or socially inferior - it is the today famous repairing of the extrapatrimonial damage. It saw of rule, it will be more exposed to such insipidities the individual of scanty resources or that he is in more vulnerable position in a specific relationship (of work, of consumption, etc.). it is the case of the contracted front to the contracting company, of the employee before their bosses, of the customer before the commercial or financial establishment, or of the simple visitor of a club front to the management of the same. We could say, with the due reservation, that in many cases the vulnerability is proportional to the difference of forces between the individuals or individuals' classes, verified in each concrete case.

With the Constitution of 1988, lawyers and judges have been feeling more comfortable in the combat to the called "moral damage". The decisions judicial repairers in that specific way of violence and of humiliation they became more abundant. Informed of that, we have to admit, they passed to be petitioned demands that brought literally to the Judiciary subjects with doubtful intention, situations of smaller importance or cases mean. The impression had been under that the supposed "victim" was to aim at a psychological relief or the affirming/recomposition of their moral values not before the society, but a fleshy amount as an end in herself. Another badly use of the consecrated action right in this wheat field was the exaggerations committed in the arbitration of the compensations. We saw, in the beginning, cases and decisions that seemed to walk in the North American compass, in that modest companies, but solid financially, went bankrupt already due to enormous compensations.

In the course of time and probably to restraint and to repair those distortions, the Judiciary - more specifically our Superior Tribunal of Justice (and at once we ask for permission for us to express our opinion) - it simply "hung for the other plate of the scale". It is to avoid exaggerations, even to discourage the lawsuit of actions with intention and doubtful content, the fact is that, ours to see, STJ went to the other end, granting inexpressive compensations and literally "making tickles" in financial institutions and other companies of great load, in that it weighs the great masters' lessons in the subject, that they already alerted: the compensation should also serve of example and warning, the backsliding of the practices objourged and being constituted, like this, in excellent instrument of social pacification, in fact, maximum purpose of the jurisdiction rendered by the State-judge.

Among the two ends the one that referred in the antecedent paragraphs, several Tribunals balanced stayed in that scale: they check compensations that don't get to enrich anybody, but that are not also ridiculous to the point of to stimulate great companies continue with this "modus operandi". Only that, unhappily, in degree of special resource, we see, a lot of times, those compensations be reduced to microscopic levels, and the offender that blemishes the honor, it dirties the name and it hinders a person's social life or company, it ends up leaving practically unhurt. After all, as always prays Colenda Superior Cuts, such budget should not be reason of enrichment", using this cliché as a club that falls heavily on that citizen that, humiliated, it trusted in the Judiciary, but that is disappointed, most of the time, after years of wait...

As this topic is not, in himself, the end of this simple one to seem, but just the middle to arrive to the aimed at goal (to analyze the present case of moral damages for improper use of copyrights and professional seal for concession of License of Installation of Mining Company, close to Colendo Tribunal of Justice of the State of Pará), we will just summarize the opinion of the majority current that it looked for to give a solution for the difficult task of establishing parameters to the fixation of the payment budget .

In SILVA PEREIRA, CAIO MÁRIO master's distinguished opinion:

"The victim of a lesion to some of those rights without effective patrimonial stamp, but offended in a very juridical one that in certain cases can be same more valuable than the members of his/her patrimony, it should receive a sum that compensates him/her the pain or the suffering, to be arbitrated by the judge, assisting to the circumstances of each case, and tends in view the

offender's ownerships and the personal situation of the offended. Nor so big that he/she turns into enrichment source, nor so small that he/she becomes inexpressive." (we highlighted)

After discoursing on the subject with the wisdom of always, teacher ARAKEN DE ASSIS ends:

"When the law, expressly, not to draw guidelines for the fixation of the value of the compensation, to example than it flows of the art. 1.547, only paragraph, of Civil Code, the arbitration will fit (art. 1.553), in which will be assisted, of rule, to the couple purpose: to compensate the victim, or harmed him/it, and to punish the offender".

In this arbitration, imposed by legal determination, it will owe the judiciary organ to show prudence and severity, impeding the reiteration of similar illicit." (2)
Already celebrated him/it HUMBERTO THEODORO JÚNIOR, when treating about the clearance sale of the damage, asserts:

"If on a side a punishment is applied that that causes moral damage to somebody else, and it is for that that it is had to take into account his/her patrimonial capacity to measure the extension of the imposed civil feather; on another side, it is had of taking into account the situation and the state of the offended, to measure the repairing in face of their personal and social conditions."

Applying the same orientation, that can one to say universal in the pretories, the Tribunal of Competence of Minas Gerais had opportunity to seat in recent sentence:
For the fixation of the quantum in compensation for moral damages, they should be taken into account the agent's economical capacity, his/her fraud degree or it blames, the social or political position of the offended, the proof of the pain' (TAMG, Ap. 140.330-7, Rel. Judge BRANDÃO TEIXEIRA, Ac. 05.11.92, DJMG, 19.03.93, p. 09). "(we highlighted)

Like this, of that that we exposed above, praising us in the renowned masters' lessons, we can summarize the factors to be considered in the arbitration of the compensation of the moral damage:

- a) The economical level and the private and social condition of the offended;
- b) the offender's economical load;
- c) The conditions in that he/she felt the offense;
- d) The fault degree or the offender's fraud.

Being combined with the same intelligence uttered by the doctrine, the jurisprudence homeland is maintaining the same understanding. Like this, our Superior Tribunal of Justice in the Special Resource n. 218529 / SP, told by Minister ARI PARGENDLER, of the 3a.Turma

CIVIL. MORAL DAMAGES. The compensation for the moral damages does not depend on proof of material damages. Known special resource and provided.

Last, our STJ already simulated that compensation for **moral damage. legal entity.** possibility. - entry n.227 -. **the legal entity can suffer moral damage"**, since filled out the presuppositions above referred.

As for the allegation of the reverse that the Code of Mining, in its art. 37 impede that it is hindered, through lawsuit, the research pursuit or it cultivates, I understand her impertinent, time that the Federal Constitution of 88, in being art. 5th., XXXV, houses the beginning of the inafastability or indeclinability of the state jurisdiction when there is lesion or even the simple threat to right. Will it be that still the Federal Constitution was not presented to the Code of Mining? Or will it be that a law infraconstitutional as the Code of Mining is superior to the one what our Larger Law?

This position, noble magistrate, no doubt hovers to the organ of the Public prosecution service except fighting for the repeal of the License of Installation of Bauxita Plateau's Project Miltônia 3, belonging to the Company Vale do Rio Doce-CVRD, have seen that there were considerable violations of environmental legal norms on the part of the reverse, norms those that are powerful tools of social control are considered to guarantee the balance of the compensatory actions between the State and the deprived initiative, in the implantations of great projects of mineral exploration and of all and any other activity potentially pollutant and capable of causing significant environmental degradation, as in the case to the long commented on.

I request, also, that it is officiated to SECTAM, in the sense that the License of Installation 067/2004 is not renewed., valid until May 25 of the year in course, emitted in favor of the reverse (Company vale do Rio Doce) and that also License of Operation is not granted, until that perlonga is definitively solved.

Finally, be totally judged reasonable to present action, so much in the environmental subject, as in the compensation for moral damages pled by the authors.

We Wait for Grant.

Belém - PA, March 31, 2005

BENEDITO WILSON CORRÊA DE SÁ
1st Promoter of Justice of Environment
and Cultural Patrimony of Belém