

November 18, 2011

UNION CARBIDE CORPORATION'S (UCC) RESPONSE TO THE CURATIVE PETITION FILED BY THE UNION OF INDIA

The Union of India (UOI)'s Curative Petition seeks to invalidate the final settlement of all claims arising out of the Bhopal disaster, which was approved twice over by the Supreme Court of India over two decades ago. The Petition is an affront to the rule of law – completely unfounded, both legally and factually.

- **There is no outstanding legal issue to be “cured.”** A curative petition is available in very limited circumstances that clearly are not present in this case. All of the issues being raised by the UOI have already been examined and re-examined, and the Court has twice ruled that the agreement is legal and binding. Nothing has changed since the last time the Court rejected the allegations in 2007 – except the position of the UOI, which previously opposed attempts by others to reopen the settlement on the very same grounds it is arguing today. Curative Petitions are not a remedy to rectify a perceived error in the judgment of the Supreme Court - this process ended with the dismissal of the review petitions in 1991. A similar curative filed to “cure” the perceived error in the 1996 verdict reducing the charges against the accused (in relation to gas leak) to negligence was filed at the same time – and dismissed by the Supreme Court as being filed on grounds that were fallacious and misconceived.
- **The settlement of \$470 million was more than adequate and fair.** Instead of establishing damages on a case-by-case basis and paying compensation accordingly, the UOI established rates at which the compensation would be paid. The amounts the UOI established as fair compensation in implementing the settlement were three times the amounts typically awarded in accident cases under Indian law. The categories were broad and administered liberally – even those present in the affected areas, irrespective of any evidence of medical injury, were paid some compensation. After payment of these amounts, a huge surplus of funds (not a shortfall, as alleged) remained with the Union of India, which at the direction of the Court was also paid out to the victims, doubling their compensation. Ultimately over 500,000 people received settlement funds, including

many people who were present when the disaster occurred but were not physically injured. The Welfare Commissioner, in an affidavit in the Supreme Court, has suggested that his office be wound up as no valid claims now remain to be discharged.

- **The settlement was carefully and methodically considered before it was approved.** The settlement was agreed to more than four years after the tragedy – sufficient time to assure that the UOI was fully aware of the magnitude of the disaster. Contrary to the allegation that the Supreme Court made “wrong assumptions” about the number of victims, the Court substantially overestimated the number of serious claims (deaths, utmost severe injuries and permanent disabilities) to be 35,000, when the actual number based on UOI’s own figures turned out to be 10,239.
- **The settlement amount was intended to be a final, lump-sum payment of all claims arising out of the disaster.** Contrary to the UOI’s argument, the Supreme Court did not intend to leave the door open to requests for additional funds from UCC, and expressly rejected a request by various interest groups to add a “reopener” mechanism to the settlement. The UOI voluntarily entered into the settlement on behalf of the victims, and in the event of a shortfall (which did not occur) the Supreme Court ruled that UOI would be solely responsible for additional funds.
- **Even if there were some basis for setting aside the 1989 settlement, UCC has never been tried or found liable for the disaster.** In fact, the United States Court of Appeals found that at the time of the incident, UCC had no involvement in the Bhopal plant operations and that the plant had "been constructed and managed by Indians in India." UOI does not cite any facts or documents in the Curative Petition that support its underlying claim that UCC is liable. In choosing to settle rather than litigate, UCC did not acknowledge any liability – and in fact “seriously contested” such alleged liability, as noted in the Court’s 1991 judgment reconfirming the agreement. Therefore:
 - If the settlement could be set aside, the UOI would be required to return the settlement funds to UCC with interest and the legal process would essentially start over

- The UOI would have to prove – at this distance of time - UCC’s liability at trial and establish the actual damages sustained by each individual claimant. Indian law would also require them to prove the earning capacity of each of the victims. This may well result in the payment of compensation far less than the amounts awarded from the settlement, which ended up being six times greater than typical awards in accident cases under Indian law.
- Any attempt to try UCC more than a quarter of a century after the 1984 disaster – long after it ceased to be subject to the jurisdiction of the Indian courts – would deprive UCC of its right to due process and render any resulting judgment unenforceable against UCC in the courts of the United States.