

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3187-88 OF 1988

IN THE MATTER OF

UNION CARBIDE CORPORATION

(Appellant)

Versus

UNION OF INDIA

and

VICE VERSA

(Respondent)

**AFFIDAVIT ON BEHALF OF
UNION CARBIDE CORPORATION (UCC)**

I, John Macdonald, Assistant Secretary of Union Carbide Corporation with offices at 39 Old Ridgebury Road, Danbury, Connecticut, USA, do hereby solemnly affirm and state as follows :

1. I am the Assistant Secretary of Union Carbide Corporation and am competent to affirm this affidavit.
2. This affidavit is filed as requested by the Order of this Court dated April 5, 1989. Before the Union of India brought suit against UCC in the U.S. Courts, UCC offered to settle all claims arising out of the Bhopal disaster for US \$ 78 million and, later, US \$ 100 million. Those offers were rejected by the Union of India.
3. While the Union of India's suit was pending in the U.S. Courts, UCC made various additional settlement offers. No such offer involved any amount in excess of US \$ 300 million plus an undertaking to seek authority from UCC's Board of Directors for an additional US \$ 50 million if that would result in a final overall resolution of all claims, including claims of the Union of India. UCC never offered any additional sum to the Union of India for its costs and expenses or otherwise, nor has any such sum ever been paid.
4. At no time before the commencement of the hearings of the Appeals in the Supreme Court of India did UCC offer any sum in excess of US \$350 million for immediate payment. However, shortly before the agreement on February 14, 1989 to make a payment of the sum of US \$ 470 million, the highest settlement offer had been US \$ 426 million payable immediately, which offer was rejected by counsel for the Union of India. At that time, Counsel

for UCC had also indicated to counsel for the Union of India that US \$ 426 million was the last and final offer.

5. At various times during prior negotiations, UCC had offered to pay sums in instalments aggregating in excess of US \$ 470 million but all those offers were for payments over period of time—10 years or longer—without interest. All of those offers had values less than US \$ 470 million paid immediately.
6. At no time did UCC or anyone on its behalf offer or agree to pay or pay any sum or anything of value, in the past, present or future, directly or indirectly, as bonus, commission or otherwise, to effectuate the settlement of the Bhopal litigation to any person or entity associated with or related in any way to the Union of India, or any of its agencies, instrumentalities or subdivisions, or any political party, association or organization or any representative of any such organizations. Further no such payment was ever solicited.

DEPONENT

VERIFICATION

I, John Macdonald, the deponent above-named do hereby verify that the facts stated in paragraph 1 of the foregoing affidavit are true on my personal knowledge; the facts stated in paragraphs 2, 3, 4 and 5 are based on information received and believed to be true. No part of it is false, and nothing material has been concealed therefrom.

Verified at Danbury, Connecticut on this 24th day of April, 1989.

DEPONENT