

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: UNION CARBIDE  
CORPORATION GAS PLANT  
DISASTER AT BHOPAL,  
INDIA IN DECEMBER, 1984**

**Mdl Docket No. 626  
Misc. No. 21-38  
(J.F.K.)  
ALL CASES**

**AMENDED CONSOLIDATED COMPLAINT AND JURY DEMAND**

The Plaintiffs in all cases which have been consolidated into this proceeding by order of the Judicial Panel on Multidistrict Litigation, together with Plaintiffs in all other related actions which may be consolidated subsequent to the filing of this Consolidated Complaint (with the exception of *The Union of India v. Union Carbide Corporation*, No. 85 Civ. 2696, and those cases consolidated as shareholder or derivative cases), by Executive Committee Members F. Lee Bailey and Stanley M. Chesley, complain against Union Carbide Corporation as follows:

**JURISDICTION AND PARTIES**

1. Plaintiffs incorporate by reference all allegations concerning their identity, residence, citizenship and representation status as are set forth in actions (except those noted above) previously consolidated into this proceeding or as are set forth in actions which are subsequently consolidated into this proceeding.

2. The Defendant, Union Carbide Corporation ("Union Carbide"), is a multinational corporation duly licensed under the laws of the State of New York, with its principal places of business in Connecticut and New York. Union Carbide Corporation has diverse and extensive international operations in India, Canada, the Middle East, the Far East, Africa, Latin America, Europe and in other countries which account for approximately one-third of its total sales, and is one of the world's largest chemical companies with assets of approximately 10.3 billion dollars.

3. The amount in controversy exclusive of interest and costs, for each of the Plaintiffs, exceeds Ten Thousand Dollars (\$10,000.00).

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 in that complete diversity of citizenship exists between all Plaintiffs who are either citizens of different states or are citizens of the Union of India, and Union Carbide.

5. Jurisdiction also exists in this Court pursuant to 28 U.S.C § 1350

in that this consolidated proceeding includes civil actions brought by aliens for torts committed in violation of the law of nations or a treaty of the United States.

6. Venue is proper pursuant to 28 U.S.C. § 1391(a) in that the Defendant is a resident of this judicial district and these cases have been transferred to this district by order of the Judicial Panel on Multidistrict Litigation.

7. This Court is the most convenient forum, because of the national and use of highly toxic chemicals which are designed and marketed worldwide by United States Corporations.

#### GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

8. At all times material, Defendant Union Carbide designed, constructed, owned, operated, managed and controlled a chemical plant in the City of Bhopal, in the State of Madhya Pradesh, one of the states constituting the Union of India, through its subsidiary Union Carbide India Limited.

9. At all times material, Defendant Union Carbide manufactured, processed, handled and stored at its Bhopal plant methylisocyanate (hereinafter "MIC"), a chemical used in the manufacture of agricultural pesticides produced and marketed by Union Carbide.

10. At all times material, Defendant Union Carbide knew that MIC is an extraordinarily reactive, toxic, volatile, flammable and ultrahazardous chemical; that MIC is one of the most dangerous substances known to man; that MIC is easily contaminated and reacts to certain contaminants with explosive violence and speed; that exposure to even small concentrations of MIC poses an immediate danger to living beings and the environment; and that human exposure to MIC is known to cause, among other things, death, serious respiratory impairment and eye and skin damage.

11. At all times material, Defendant Union Carbide knew or should have known that the long-term effects of human exposure to MIC were not well documented, but that various medical literature suggested that exposure could lead to genetic and carcinogenic consequences.

12. With such knowledge, Defendant Union Carbide undertook to design, construct, operate, manage and control a plant which would be safe for the production, handling, storage and processing of MIC in the City of Bhopal, India. In addition, Union Carbide made the decision that MIC would be stored in quantity at the Bhopal plant. The design included, by way of example and not limitation, the following:

- a. Process flow diagrams;
- b. Process and instrument diagrams;
- c. Performance specifications and materials of construction of all

major and minor equipment;

*d.* Performance specifications of control system, control schemes and materials;

*e.* Valve piping and materials of construction specifications;

*f.* Design criteria and sketches of Union Carbide's Proprietary Equipment;

*g.* Typical equipment arrangements and unit layout; and

*h.* Description of special analytical instrumentation and laboratory quality control equipment.

13. Defendant Union Carbide warranted that the design was based upon the best manufacturing information available and that the drawings and design instructions were sufficiently detailed and complete so as to enable competent technical personnel to detail design, erect, commission and operate the Bhopal plant.

14. Defendant Union Carbide trained technical personnel for its Bhopal plant at its production facilities in the United States. Defendant Union Carbide supervised the Bhopal plant with personnel from its United States facilities.

15. Defendant Union Carbide represented to the Union of India that it was a pioneer in pesticide research and development with extensive research facilities and trained and experienced personnel. Defendant Union Carbide further represented to the Union of India that it would provide the Bhopal plant with the best and most up-to-date technical data and information in its possession for the manufacturing, processing, handling and storage of MIC and that it would continually update this information.

16. On December 2-3, 1984, there was a massive escape of lethal MIC gas from the Bhopal plant into the atmosphere; raining death and destruction upon the innocent and helpless persons in the City of Bhopal and the adjacent countryside, and causing widespread pollution to its environs in the worst industrial disaster mankind has ever known.

#### **COUNT I: MULTINATIONAL ENTERPRISE LIABILITY**

17. Plaintiffs reallege and incorporate by reference herein the general allegations as set forth in paragraphs one (1) through sixteen (16) of this Complaint.

18. Multinational corporations by virtue of their global purpose, structure, organization, technology, finances and resources have it within their power to make decisions and take actions that can result in industrial disasters of catastrophic proportion and magnitude. This is particularly true with respect to those activities of the multinationals which are ultrahazardous or inherently dangerous.

19. Key management personnel of multinationals exercise a closely-

held power which is neither restricted by national boundaries nor effectively controlled by international law. The complex corporate structure of the multinational, with networks of subsidiaries and divisions, makes it exceedingly difficult or even impossible to pinpoint responsibility for the damage caused by the enterprise to discrete corporate units or individuals. In reality, there is but one entity, the monolithic multinational, which is responsible for the design, development and dissemination of information and technology worldwide, acting through a forged network of interlocking directors, common operating systems, global distribution and marketing system, financial and other controls. In this manner, the multinational carries out its global purpose through thousands of daily actions, by a multitude of employees and agents. Persons harmed by the acts of a multinational corporation are not in a position to isolate which unit of the enterprise caused the harm, yet it is evident that the multinational enterprise that caused the harm is liable for such harm. The multinational must necessarily assume this responsibility, for it alone has the resources to discover and guard against hazards and to provide warnings of potential hazards. This inherent duty of the multinational is the only effective way to promote safety and assure that information is shared with all sectors of its organization and with the nations in which it operates.

20. A multinational corporation has a primary, absolute and non-delegable duty to the persons and county in which it has in any manner caused to be undertaken any ultrahazardous or inherently dangerous activity. This includes a duty to provide that all ultrahazardous or inherently dangerous activities are conducted with the highest standards of safety and to provide all necessary information and warnings regarding the activity involved.

21. Defendant multinational Union Carbide breached this primary, absolute and non-delegable duty through its undertaking of an ultrahazardous and inherently dangerous activity posing unacceptable risks at its plant in Bhopal, and the resultant escape of lethal MIC from that plant. Defendant Union Carbide further failed to provide that its Bhopal plant met the highest standards of safety and failed to inform the Union of India and its peoples of the dangers therein. Defendant Union Carbide is primarily and absolutely liable for any and all damages caused or contributed to by the escape of lethal MIC from its Bhopal plant, as more fully set forth below.

## COUNT II: ABSOLUTE LIABILITY

22. Plaintiffs reallege and incorporate by reference herein the general allegations as set forth in paragraphs one (1) through twenty-one (21) of this Complaint.

23. In manufacturing, processing, handling and storing MIC at its plant in Bhopal and in designing and putting the plant into operation,

Defendant Union Carbide engaged in an ultrahazardous and/or inherently dangerous activity. This activity created the clear and present danger of death, serious injury and property damage in the event of the escape of the lethal MIC into the atmosphere.

24. Defendant Union Carbide allowed the lethal MIC to escape from its Bhopal plant on December 2-3, 1984, exposing innocent and helpless people in the City of Bhopal, the adjacent countryside and its environs to the deadly effects of MIC, thereby contaminating and polluting an extensive area.

25. Defendant Union Carbide is absolutely liable for any and all damages caused or contributed to by the escape of the lethal MIC from its Bhopal plant, as more fully set forth below.

### COUNT III: STRICT LIABILITY

26. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through twenty-five (25) of this Complaint.

27. Defendant Union Carbide was under a duty to design, construct, maintain and operate its Bhopal plant in such a manner as to prevent the escape of lethal MIC from the plant and to protect persons from unreasonably dangerous and defective conditions and to warn persons of the dangers and risks associated with the plant and its manufacturing processes. Defendant Union Carbide breached this duty, and the massive escape of lethal MIC gas occurred as the result of unreasonably dangerous and defective plant conditions which involved MIC production and storage procedures and facilities, instrumentation, safety systems, warning systems, operation and maintenance procedures, and specifically included, by way of example and not limitation, the following:

*a.* Defendant Union Carbide ordered and insisted that MIC be stored in dangerously large quantities.

*b.* No intermediate storage facility was constructed between the production plant and the storage tanks, thus creating the potential for a contaminant to enter the storage tanks.

*c.* The storage tanks were not insulated and the chilling system was defectively designed and improperly maintained.

*d.* The MIC storage tanks were not equipped with dual temperature indicators to sound alarms and flash warning lights in the event of an abnormal rise in temperature.

*e.* The vent gas scrubber system was defectively designed and improperly maintained.

*f.* Defendant Union Carbide failed to provide even basic information with regard to protection against or appropriate medical treatment in the event of MIC exposure.

*g.* Defendant Union Carbide failed to disclose the internal safety

survey of its plant in Institute, West Virginia, dated September 10, 1984, which acknowledged that a runaway reaction in MIC storage tanks could occur.

*h.* Defendant Union Carbide failed to provide specifications for determining what constituted either stable or unstable MIC.

28. In creating and maintaining unreasonably dangerous and defective conditions, Defendant Union Carbide is strictly liable for any and all damages caused or contributed to by the escape of MIC from its Bhopal plant, as more fully set forth below.

#### COUNT IV: NEGLIGENCE

29. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through twenty-eight (28) of this Complaint.

30. Defendant Union Carbide was under a duty to design, construct, maintain and operate its Bhopal plant with reasonable care so as to protect persons from unreasonable dangers, and to use reasonable care to warn persons of the dangers and risks associated with the plant and its manufacturing process. Defendant Union Carbide breached this duty and the massive escape of lethal MIC gas occurred as the proximate result of this negligence, as more fully set forth in paragraph twenty-seven (27) of this Complaint.

31. The Bhopal plant was in Defendant's exclusive control and the massive escape of lethal MIC could not have occurred but for the negligence of Defendant Union Carbide.

32. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of MIC from its Bhopal plant due to its negligence, as more fully set forth below.

#### COUNT V: BREACH OF WARRANTY

33. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraph one (1) through thirty-two (32) of this Complaint.

34. Defendant Union Carbide expressly and impliedly warranted that the design, construction, operation and maintenance of its Bhopal plant were undertaken with the best available information and skill in order to insure safety. These warranties were untrue in that the Bhopal plant was, in fact, defective and unsafe and the technical services and information provided by Defendant Union Carbide and the resulting plant operating practices were defective in numerous respects, as more fully set forth in paragraph twenty-seven (27) of this Complaint.

35. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of MIC from its Bhopal plant due to its breach of warranties, as more fully set forth below.

**COUNT VI: MISREPRESENTATION**

36. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through thirty-five (35) of this Complaint.

37. Defendant Union Carbide falsely represented to the Union of India that its Bhopal plant was designed with the best available information and skill and that the operation of its Bhopal plant would be maintained with current and up-to-date knowledge. Defendant Union Carbide knew that these representations were false, or asserted these representations without knowledge of their truth or falsity, and intended that the Union of India act thereon. The Union of India reasonably and justifiably relied upon these representations to its detriment, and the Union of India's reliance inured to and was for the benefit of the Plaintiffs.

38. Defendant Union Carbide is liable for any and all damages caused or contributed to by the escape of MIC from its Bhopal plant due to its misrepresentation, as more fully set forth below.

**COUNT VII: PUNITIVE DAMAGES**

39. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through thirty-eight (38) of this Complaint.

40. Defendant Union Carbide's conduct in failing to design, construct, maintain and operate a safe plant exposed the people and property in Bhopal, the adjacent countryside and its environs to a massive disaster which Defendant knew could occur. Such conduct on the part of Defendant Union Carbide, in light of its knowledge of the lethal properties of MIC, was unlawful, wilful, malicious and reprehensible and was in deliberate, conscious and wanton disregard of the rights and safety of the citizens of the Union of India.

41. Defendant Union Carbide's conduct as described herein clearly establishes Plaintiffs' rights to an award of punitive damages to deter this wrongful conduct from ever again recurring.

**DAMAGES AND RELIEF**

42. As a direct and proximate result of the conduct of Defendant Union Carbide, numerous thousands of persons in Bhopal, the adjacent countryside and its environs suffered agonizing, lingering and excruciating deaths, serious and permanent injuries, including but not limited to acute respiratory distress syndrome, ocular and gastrointestinal injuries, and pain, suffering and emotional distress of immense proportion. The survivors, who experienced an unimaginable and unforgettable catastrophe, witnessing the virtual destruction of their entire world, have suffered and will continue to suffer severe emotional distress. Further injuries to such persons, and to generations yet unborn, are reasonably certain to occur.

43. As a further direct and proximate result of the conduct of Defendant Union Carbide, numerous thousands of persons have been and will be required to undergo extensive medical examinations, rehabilitative care and treatment.

44. As a further direct and proximate result of the conduct of Defendant Union Carbide, the families and relatives of the dead have suffered, and will continue to suffer, from the loss of support, aid, comfort, society and companionship of the deceased.

45. As a further direct and proximate result of the conduct of Defendant Union Carbide, there was extensive damage to personal and business property resulting in disruption of industrial, commercial and governmental activities throughout the City of Bhopal, the adjacent countryside and its environs, with consequential losses of personal and business income and governmental revenue throughout the Union of India, as well as the impairment of future earning capacity of numerous thousands of persons.

46. As a further direct and proximate result of the conduct of Defendant Union Carbide, there has been extensive damage to the natural environs of the City of Bhopal, and the adjacent countryside, and further harm is likely to befall the environment.

47. Because of the enormity of the BHOPAL DISASTER, Plaintiffs are not currently able to allege with particularity and in a dollar amount the precise damages suffered by persons having claims. While the exact number of dead and injured persons is not known to Plaintiffs, the recorded death toll to date is approximately 1,700 persons, and as many as 200,000 persons have been physically injured. Neither the extent and nature of the injuries, nor the permanency of the injuries suffered by victims of the disaster is known to Plaintiffs. Surveys and numerous scientific and medical studies are currently being conducted and at such time that the surveys and studies are completed, Plaintiffs will allege a figure for compensatory damages sustained by persons with claims.

WHEREFORE, Plaintiffs demand judgment and relief against Defendant Union Carbide as follows:

*a.* Awarding compensatory damages in an amount appropriate under the facts and the law to fully, fairly and adequately compensate all persons having claims.

*b.* Awarding punitive damages in an amount sufficient to deter Union Carbide and any other multinational corporation from the wilful, malicious and wanton disregard of the rights and safety of the citizens of those countries in which they do business.

*c.* Awarding costs and attorneys fees incurred herein.

*d.* Awarding such other relief as the Court may deem just and equitable.

#### CLASS ACTION ALLEGATIONS

48. Plaintiffs bring this action on their own behalf and on behalf of a

class of similarly situated individuals pursuant to Federal Rules of Civil Procedure §§ 23 (a), (b) (1) (B), and (b) (3). The class includes all persons who were exposed to the release on December 2-3, 1984 of MIC from Defendant's plant in Bhopal, India.

49. The class consists of four subclasses, as follows:

*a.* All persons who suffered personal injuries as a result of exposure to the MIC gas, as set forth above;

*b.* All persons who are entitled to recover damages for losses caused by death of their relative, including but not limited to, wives, husbands and children, as a result of exposure to MIC as set forth above;

*c.* All persons who were exposed to MIC as set forth above but whose injuries have not yet manifested themselves; and

*d.* All persons who have sustained economic injuries as a result of the release of MIC as set forth above.

50. The class and subclasses represented by Plaintiffs are so numerous that joinder of all members is impracticable. The precise number of individuals exposed to MIC is not presently known, but at least 1,700 people are believed to have been killed, and tens of thousands more have been seriously injured and are at risk of serious injury in the future.

51. Adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of other class members not parties to the adjudications. The claims are so numerous and significant that there is a great risk that there would be a limited and inadequate fund available from which Defendant's assets could compensate Plaintiffs and the class for either their compensatory or punitive damages, as well as the equitable relief requested herein. Individual litigation of these claims would substantially impair or impede the ability of the class members to protect their interests.

52. There are predominating common questions of law and fact relating to the claims of Plaintiffs and the class, among which are the following:

*a.* Defendant's negligence in the design of its MIC storage facility at Bhopal, India;

*b.* Defendant's negligence in the design, construction and operation of safety systems at its MIC storage facility at Bhopal, India;

*c.* Defendant's intentional, wilful and wanton disregard of the dangers inherent in the design, construction and operation of its MIC storage facility at Bhopal, India; and

*d.* Defendant's strict liability for the defective and inherently dangerous design, construction and operation of the MIC storage facility and safety system at Bhopal, India.

53. The claims of the named Plaintiffs are typical of the class and the subclasses each represents, and the named Plaintiffs will fairly and

adequately protect the interests of the class and its subclasses. Plaintiffs' interests do not conflict with those of the class and subclasses, and Plaintiffs are represented by counsel experienced in civil and class action litigation.

54. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### **COUNT VIII: MULTINATIONAL ENTERPRISE LIABILITY**

55. Plaintiffs reallege and incorporate by reference herein the general allegations as set forth in paragraphs one (1) through (21) and forty-eight (48) through fifty-four (54) of this Complaint.

#### **COUNT IX: ABSOLUTE LIABILITY**

56. Plaintiffs reallege and incorporate by reference herein the general allegations as set forth in paragraphs one (1) through twenty-five (25) and forty-eight (48) through fifty-five (55) of this Complaint.

#### **COUNT X: STRICT LIABILITY**

57. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through twenty-eight (28) and forty-eight (48) through fifty-six (56) of this Complaint.

#### **COUNT XI: NEGLIGENCE**

58. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through thirty-two (32) and forty-eight (48) through fifty-seven (57) of this Complaint.

#### **COUNT XII: BREACH OF WARRANTY**

59. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through thirty-five (35) and forty-eight (48) through fifty-eight (58) of this Complaint.

#### **COUNT XIII: MISREPRESENTATION**

60. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through thirty-eight (38) and forty-eight (48) through fifty-nine (59) of this Complaint.

#### **COUNT XIV: PUNITIVE DAMAGES**

61. Plaintiffs reallege and incorporate by reference herein the allegations as set forth in paragraphs one (1) through forty-one (41) and forty-eight (48) through sixty (60) of this Complaint.

**DAMAGES AND RELIEF**

62. Plaintiffs reallege and incorporate by reference herein paragraphs forty-two (42) through forty-seven (47) and paragraphs forty-eight (48) through sixty-one (61) of this Complaint.

WHEREFORE, Plaintiffs demand judgment and relief against Defendant Union Carbide as follows:

- a. That the Court certify a class and subclasses as set forth above.
- b. Awarding compensatory damages in an amount appropriate under the facts and the law to fully, fairly and adequately compensate all persons having claims.
- c. Awarding punitive damages in an amount sufficient to deter Union Carbide and any other multinational corporation from the wilful, malicious and wanton disregard of the rights and safety of the citizens of those countries in which they do business.
- d. Awarding costs and attorneys fees incurred herein.
- e. Awarding such other relief as the Court may deem just and equitable.

Dated: New York, N. Y.  
June 28, 1985

**BHOPAL DISASTER LITIGATION  
EXECUTIVE COMMITTEE MEMBER  
F. LEE BAILEY & STANLEY M. CHESLEY**

By Sd/-  
**AARON J. BRODER**

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**STANLEY M. CHESLEY  
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& CHESLEY CO., L.P.A.**  
1513 Central Trust Tower  
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Tel: (513) 621-0267

**JURY DEMAND**

With the filing of this Complaint, Plaintiffs herein demand a trial by jury.

**BHOPAL DISASTER LITIGATION  
EXECUTIVE COMMITTEE MEMBERS  
F. LEE BAILEY & STANLEY M. CHESLEY**

By Sd/-  
**AARON J. BRODER**

**IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that the July 7, 1985 deadline set by the Court for the Executive Committee to submit to the Court a plan for the distribution of interim relief by the Indian Red Cross shall be, and hereby is, extended to and including July 19, 1985.**

Dated: New York, New York  
July 8, 1985

**PLAINTIFFS' EXECUTIVE COMMITTEE:**

By: Sd/-  
F. LEE BAILEY by AARON J. BRODER  
MICHAEL V. CIRESI  
STANLEY M. CHESLEY

**COUNSEL FOR DEFENDANT  
UNION CARBIDE CORPORATION:**

So. Ordered this  
9 day of July, 1985.

By: Sd/-  
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New York, NY 10178

Sd/-  
JOHN F. KEENAN, U.S.D.J.