

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

IN RE: UNION CARBIDE CORPORATION GAS PLANT DISASTER AT BHOPAL, INDIA ALL CASES IN DECEMBER, 1984 MDL Docket No. 626 Misc. No. 21-38 (J. F. K.)

MOTION FOR FAIRNESS HEARING

On May 12, 1986, this Court entered an order dismissing a consolidated complaint filed by the Plaintiff's Executive Committee on behalf of thousands of plaintiffs in Bhopal, India, on the grounds of forum non conveniens. This Court had graciously consented to delay the entry of its opinion and order in the case at the request of all parties involved, because it was believed that a global settlement of the claims was at hand.

Ultimately, a settlement agreement was reached between the two members of the Executive Committee appointed by the Court to speak for all of the individual counsel and defendant Union Carbide, for approximately three hundred fifty million dollars (\$ 350,000,000.00). This sum was deemed adequate by those appointed by the Court to negotiate a settlement for the victims to fairly compensate those entitled to benefits arising from 1757 deaths, fifteen to twenty thousand patients who received or are receiving medical treatment in varying degrees, and between one hundred thousand and two hundred thousand victims who were merely affected but did not receive treatment. When the funds in question were allocated among the groups described, it would appear that individual benefits are far greater than plaintiffs in India—particularly from a society at the general economic level of Bhopal—have ever received at the hands of the Indian Courts. Liaison Counsel, although not officially voting on the issue, was solicited for his always valuable views and supported the position of the Court's appointees.

Had it not been for the opposition of the Union of India, claiming through counsel that the offer was inadequate, the decision of May 12, however correct in law, would not have been necessary. Virtually all of the American and Indian lawyers who have undertaken to pursue the rights of these plaintiffs are in accord that the settlement is well within the bounds of adequacy. All are equally convinced that if the case is returned to India the victims may receive no compensation for a long period of time, and may ultimately receive less than is now offered.

The case is therefore in a posture believed to be unique in the annals

of disaster litigation. Those licensed to practice law in U.S. Courts and the defending company have reached an accord. It should be noted that this was not easily accomplished. Counsel appointed by the Court spent many hours in serious negotiations with Union Carbide. An initial offer of one hundred million dollars (\$ 100,000,000) was, over a period of eight months, negotiated upwards in favor of the plaintiffs to the sum presently offered, or a factor of 350%. At the request of all counsel, the Court, despite the fact that for many months it has been presiding over a difficult and complex criminal case, worked evenings and weekends to assist these negotiations. In the course of these efforts, the Court interviewed high officials from Union Carbide, and victims, doctors and officials from India. At the request of all counsel, the Court met individually with the various parties sounding out their views, settlement rationale, and the like. Indeed, those who participated might conclude that the Court's mention that it labored long and hard to assist settlement is a masterful understatement.

Without taking issue with the Court's ruling on the principal issue, it is fundamentally the right of any litigant to pursue settlement at any time. Counsel for the individual plaintiffs, speaking through the committee lawyers selected by the Court (as opposed to counsel selected by the Union of India) wish to pursue the standing offer of settlement at least to the point that they have fully discharged their obligations to their clients according to standards in America, not in some other land, for it is in America that they have sought relief and in America they are entitled to get it by way of fair settlement if not by way of trial.

No class has been certified in this case, but implicit in the Court's original appointment of a Plaintiff's Executive Committee was a purpose to further and protect the rights of the plaintiffs. In the present posture of the case all we know is that the Union of India, which claims the right by Indian Statute to declare itself fit to practice law in a U.S. District Court, is the sole opponent to a settlement. The Union of India was so bold on May 20, 1986, to inform the Court that it "will move to dismiss" all the plaintiff's claims to frustrate the ability of plaintiffs individual attorneys to appeal the Court's ruling. Significantly the Union of India offers not a scintilla of evidence to show that the victims have been informed as to what they would receive if they elected to settle now, what problems they may face in litigation in India if remedies are pursued there, and when payment may be expected in view of India's historical difficulties in getting cases to trial within less than ten years. Lawyers don't refuse proposals of settlement, clients do, after being given enough information to make a knowing and intelligent understanding decision.

Because the Court has spent a great amount of time becoming familiar with the many problems and details involved in the case, the Court is still in a position to offer help to the plaintiffs. We aver on their behalf that they would like that opportunity.

We therefore move that the Court, without delaying the legal proceed-

ings which may flow from the rendition of its decision on questions of law, conduct a hearing to determine whether the settlement proposed for these plaintiffs is fair and reasonable. We respectfully suggest that evidence ought to be taken relevant to the following questions :

A. To what extent have the victims been informed as to what amounts of money they would receive individually if the present offer were accepted?

B. Do these victims wish to renounce the retainers they have signed with their American counsel, or do they wish American counsel to continue to negotiate on their behalf even if the case is transferred to India?

C. What have they been told about what monies they can expect to personally receive if they litigate in India, and approximately when?

D. In all the circumstances of this unique case, is the settlement within the bounds of fairness or is it so low as to be unconscionable, especially as against realistic alternatives?

E. From the facts set forth in the Court's opinion, it is plain that one of the parties responsible for the gas leak may well be the Union of India itself, as counsel for Union Carbide informed the Court at our very first hearing over a year ago. Have the plaintiffs been informed of this fact, so that they may fully protect themselves, or has the Union of India given them self-serving advice detrimental to their interests?

F. Can any potential defendant in a tort action be allowed to claim that it nonetheless represents, as a lawyer, the victims of the tort, in America or in India?

G. Do those victims who purport to reject settlement at this time in hopes of a greater net value in the future (presumably the only rational ground for rejecting a money settlement) understand that their alleged "counsel", the Union of India, refused to accept any responsibility to account to the Court for the distribution of \$5,000,000.00 made available by Union Carbide, as interim relief—at the urging of this Court over one year ago? As a result, it was necessary for the American Red Cross to be importuned to accept responsibility for the distribution of this interim relief to the Indian Red Cross. To date, only \$2,000,000.00 of this amount has been transferred to the Indian Red Cross, and there is no record as to how much has been utilized and for what purpose. It also appears that the Union of India has not played any role in the distribution of the interim relief proceeds.

H. As to those victims who wish to elect to settle presently within the terms offered, ought not the Court, as part of its original and continuing purpose to see that the victims are fairly treated, and make every effort to achieve a settlement in accordance with the desires of the victims as expressed by their counsel and the defendant herein? Such disposition of this case would be consistent with the basic underpinnings of our tort

system which permit victim and tortfeasor to enter into a voluntary settlement of the claim at any stage of the litigation.

Counsel undersigned respectfully request that if the Court for any reason is unable to hear the matters above-listed, that consideration be given to assigning such a hearing to Magistrate Dollinger, who has served the Court and the parties well in this case on prior occasions.

Dated: New York, New York
May 21, 1986

**INDIVIDUAL MEMBERS OF
PLAINTIFF'S EXECUTIVE
COMMITTEE**

F. Lee Bailey
Stanley M. Chesley

By: Sd/-
(for) F. Lee Bailey