

India: victims seek prosecution of Union Carbide officials over Bhopal disaster

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By the end of the month, the Chief Judicial Magistrate's court in Bhopal, India, will decide whether it will force Dow Chemical to send former Union Carbide officials to India to stand trial for the 1984 gas leak that has killed and injured over 60,000 people.

Dow has denied that it has any further liability for the disaster, and considers the matter closed, arguing that a settlement for claims was reached in accordance with Indian law 15 years ago. However, since 1992, Union Carbide has been lambasted as an absconder from justice because India's criminal proceedings into the tragedy have effectively been crippled by the continued non-attendance of the key accused—Union Carbide Corporation, Union Carbide Eastern and Warren Anderson, the parent company's chairman.

The chief judicial magistrates court was advised at the beginning of the year that it could make a request for international judicial assistance from the United States Department of Justice to ensure that Dow—America's largest chemicals producer—complies with any summons.

In May, three small religious shareholder groups successfully gained the support of six percent of the company's shareholders, representing over 40 million shares, to urge Dow to take legal, moral and financial responsibility for the Bhopal disaster. The shareholders are also demanding that the company publish a report outlining the scale of its potential liabilities as a result of the catastrophe.

The resolution, voted on at the company's annual general meeting on May 13, asks (but cannot force) the company to prepare a report describing new initiatives Dow has put in place to respond to problems facing survivors of the Bhopal disaster. The resolution's supporting statement also asks the company to detail

the financial and reputational risks associated with the Bhopal tragedy—the worst chemical accident in history—that killed at least 14,400 people and caused permanent disabilities for at least 50,000 others.

The shareholder resolution, which Dow's board unanimously asked shareholders to vote against, was filed by Boston Common Asset Management (BCAM) on behalf of the Brethren Benefit Trust, Sisters of Mercy of Detroit and the Sisters of the Holy Cross of Notre Dame. Collectively, they own just 5,821 shares of Dow stock, a relatively tiny amount compared to the 81 million held by the company's largest single shareholder—Capital Research Management—which represent nearly eight percent of the company.

This was the first time that shareholders had filed a resolution with Dow Chemical concerning the Bhopal tragedy. Union Carbide, which caused the disaster and which was bought by Dow in 2001, received shareholder resolutions concerning the Bhopal settlement and relief for Bhopal victims that came to votes in 1989 and 1990, receiving 6.2 percent and 3.9 percent support, respectively.

Dow Chemical, based in Midland, Michigan, is the largest US producer of chemicals and plastics, with total sales of \$33 billion in 2003.

According to rules laid down by the US financial regulator the Securities and Exchange Commission, a first-time shareholder resolution must receive at least three percent of total shareholder support to automatically ensure that the resolution is included in the company's annual general meeting the following year.

US shareholder activist group "As You Sow" approached Dow's top 125 investors and emailed 5,000 more to try to persuade them to back the resolution. Major institutional investors California Public

Employees' Retirement System (CALPERS) and New York City Employees' Retirement System (NYCERS), which together own around 7.5 million shares, and corporate governance body Proxy Voting Service recommended a "yes" vote at the annual general meeting. Other major investors also backed the resolution, such as California State Teachers Retirement Systems (CalSTERS), the 34th biggest investor in Dow with 3.24 million shares, as well as the Connecticut State Comptrollers Office (880,000 shares) and several religious institutional investors.

Lauren Compere, chief administrative officer at BCAM, which filed the resolution, said that "Dow continues to deny liability for Bhopal survivors and the remediation of the Bhopal site but asserts that there are significant legal risks—so far unspecified—associated with assisting survivors further. To say that Dow has no responsibility when it is facing court action in both the US and India because of its acquisition of Union Carbide is just plain wrong."

But while investors may have supported the resolution's demand for further disclosure, it does not mean that they want the company to accept liability for the disaster or to offer financial redress to victims or the community still at risk through contaminated groundwater. According to a CALPERS spokesperson: "We have not come to any position as to whether we believe that the company has any legal, financial or moral obligation to the victims of Bhopal. We merely want fuller disclosure about potential liabilities and their likely effect on shareholder returns."

In 1989 Union Carbide, which owned the Bhopal plant, settled a civil suit brought by the Indian government and agreed to pay \$470 million in damages for the 500,000 people exposed to the gas. The company maintained that the payment was made out of a sense of "moral", rather than "legal" responsibility since the plant was operated by a separate Indian subsidiary, Union Carbide India Limited (UCIL). The settlement, which has so far provided an average of less than \$500 to each victim, failed to cover criminal or punitive damages that are the subject of a 15-year-old trial in which Union Carbide and Dow have refused to take part.

Presently, Union Carbide is charged with culpable homicide and India is trying to extradite former Union Carbide CEO Warren Anderson to stand trial. The

company, which owned 50.9 percent of UCIL, severed its relationship with UCIL in 1994 and has argued that it has no legal obligation to conduct or finance the clean-up. However, under Indian law Dow not only bought the assets, but also the liabilities, of Union Carbide and can therefore be held to account.

Dow is currently under pressure to set aside assets to settle potentially crippling liabilities from risks associated with its production and use of asbestos, Agent Orange, and dioxin contamination in rivers in Michigan. In December 2002, Dow disclosed that the long-term costs associated with Union Carbide's asbestos liability could be \$2.2 billion, and it took an immediate charge of \$828 million to its accounts. At the end of 2003, Dow had accrued obligations of \$381 million for environmental remediation and restoration costs.

A federal appeals court in New York in March this year reversed a lower court decision that absolved Dow of responsibility for cleaning up the site in Bhopal. The Indian government has a deadline of June 30 to submit a letter to the court expressing its support for Dow to clean up the Bhopal site.

On April 15 San Francisco became the first US city to pass a resolution urging Dow to address its liabilities in Bhopal. "It is unforgivable that survivors of the disaster are being revictimised by the inaction of Union Carbide and its new owner Dow Chemical," said City of San Francisco Supervisor Aaron Peskin.



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