

November 18, 2011

**UNION CARBIDE CORPORATION'S (UCC)
RESPONSE TO APPLICATIONS FILED
BY VARIOUS GROUPS IN SUPPORT
OF THE UNION OF INDIA'S CURATIVE PETITION**

Several interest groups have filed Applications in support of the Union of India's Curative Petition seeking to invalidate the final settlement of all claims arising out of the Bhopal disaster entered into over two decades ago. The Groups' Applications add nothing to the Union of India's unfounded Petition.

- **The Groups' objections to the settlement are neither new nor valid.** The Supreme Court of India fully considered and rejected the objections raised by these groups in a final judgment dated October 3, 1991. As recently as 2007, the Supreme Court again rejected challenges to the adequacy of the settlement on the same grounds they assert today. In those proceedings, the Union of India (UOI) established that all valid claims had been compensated, and that there was sufficient money available to disburse additional compensation to bona fide claimants.
- **The settlement was timely and carefully considered.** The allegation that the negotiation and review of the settlement were somehow hurried is an affront to the Indian judiciary and Government. It is also false. It was entered into after nearly four years of litigation, at a time when the Supreme Court determined that the matter was "preeminently fit for overall settlement."
- **The settlement resulted in a huge surplus.** The settlement was sufficient to pay all valid claims, leaving a huge surplus that enabled the UOI – pursuant to the Supreme Court's direction – to pay all claimants twice the amounts the UOI determined to be fair compensation. This assertion of the Union of India to this effect -- made in an affidavit to the Supreme Court -- remains a part of the record.
- **The UOI established the Program for processing claims.** The UOI established the criteria for the acceptance and categorization of claims in a Program promulgated pursuant to the Bhopal Act adopted by the Indian parliament. The Groups' contention that UCC established the Program is manifestly false. The Program itself states it was promulgated by the UOI. From 1991 to 2011 various groups have raised various challenges in the matter of disbursement of compensation including alleging flaws in the Program – but only now are they making this allegation, for the first time.
- **The UOI's claims process is now complete, and its determinations are final.**
 - The validity of victims' claims was determined by the commission established by the UOI on a claim-by-claim basis, subject to the victims' rights to judicial appeal. The claims process is complete and the determinations are final. A Group of Ministers recently concluded that the commission's determinations "have to be accepted."

- In attempting to challenge the commission's determinations, the Groups greatly exaggerate the number of deaths and serious injuries caused by the disaster. They purport to rely on a report by the Indian Council of Medical Research ("ICMR") published over thirteen years ago, but that report does not say what these groups claim that it does.
- The Indian Council of Medical Research (ICMR) report cited by the Groups does not support the claim that over 22,000 people died as a result of the disaster. That figure is nowhere mentioned in the report; rather the report repeatedly states that the number of deaths in the months following the disaster was between 2,000 and 2,500 and that the overall death rates in gas affected areas of Bhopal rapidly declined after the disaster, becoming no different from the death rates in non-affected areas. Nor does the report support the NGOs' claim that all people residing in gas affected areas were seriously injured; in fact the vast majority was not.
- **The \$8.1 billion claim is spurious.** Under the Bhopal Act, the UOI had the exclusive right to assert and settle all claims arising out of the disaster. The settlement it entered into disposed of all such claims and the settlement has been held to be valid. Thus, the Groups have no claim to assert. In any event, the claim is based on purported numbers of deaths and injuries that are refuted by both the ICMR report they rely on and the UOI commission's final and conclusive determinations.
- **Other contentions by the Interest Groups are equally baseless.**
 - The Groups' contention that the Supreme Court's 1991 judgment left "no valid settlement agreement between the parties" is false. The 1991 judgment expressly left the settlement "undisturbed." For the last 20 years, the UOI has treated the settlement as valid and its validity has been repeatedly confirmed by the Supreme Court. If the Settlement had been set aside, the money should have been returned to UCC in 1991 and the suit restored to trial. After the moneys have been fully disbursed, to allege for the first time in 2010 that there was no subsisting settlement is absurd.
 - The contention that the settlement is invalid because UCC violated orders and directions of the Indian courts and failed to appear in criminal proceedings is also false. UCC did not violate any court orders or directions. UCC never consented to appear in the criminal proceedings in India.
 - The contention that UCC is liable for the disaster, based on supposedly "new" documents, is both irrelevant and wrong. The documents are not new, and a U.S. court has rejected the same claims made here based on those documents. Moreover, the settlement extinguished all claims that UCC was liable for the disaster.