



Q&A With Respect to the Curative Petition

What is a Curative Petition and what is the significance of the India Supreme Court's Order responding to it?

A Curative Petition is a procedural device in India's legal system designed for use in rare and narrowly defined situations to correct judgments entered as a result of procedural judicial error. We believe that the Government of India's attempt to use the Curative Device Procedure to try to renege on the 1989 agreement it negotiated with Union Carbide Corporation (UCC) and Union Carbide India Limited (UCIL) to settle the tragic 1984 Bhopal gas disaster not only violates principles of fundamental fairness and the rule of law, but also does not meet the core requirements/grounds for filing such a petition under Indian law. In any event, the India Supreme Court's Order issuing notice on the Curative Petition did not address the legal merits of the petition, but simply gave the parties Notice that the petition had been filed and invited the parties to file responses in anticipation of a later hearing. Both UCC and The Dow Chemical Company (TDCC) promptly filed their responses in 2011, but no hearing has been scheduled and the Government of India has not responded to either UCC or TDCC's filings opposing the Curative Petition, despite a request from the Indian Supreme Court to do so.

What is The Dow Chemical Company's (TDCC) position regarding this request for a Curative Petition by the Indian Government?

The 1984 gas release in Bhopal was a tragedy of such unprecedented scale that it understandably evokes powerful emotions even thirty years later. But those emotions do not justify abandoning principles of fairness and the rule of law. TDCC believes that the Curative Petition is meritless as to all the parties as to which the Government seeks relief. As to TDCC itself, the Curative Petition is inappropriate for the additional reason that TDCC had no involvement at all with the Bhopal tragedy, which occurred more than 16 years before TDCC acquired stock in Union Carbide Corporation (UCC), or with the settlement which is the purported basis for the Curative Petition. The attempt to hold TDCC responsible is apparently based on the Union of India's erroneous belief that TDCC and UCC are the same company. In fact, TDCC and UCC are, and have always been, separate companies. Under well-established principles of the corporate law of both India and the United States, TDCC did not assume UCC's actual or potential liabilities as part of the 2001 transaction in which UCC became a subsidiary of TDCC. Additionally,



under India Law only parties to the original proceedings can be added as parties in a Curative Petition proceeding, and TDCC was not a party to the original proceeding.

Also, it is important to remember that after the 1989 settlement, UCC – with the permission of the India Supreme Court – sold all of its shares in Union Carbide India Limited. With the sale, UCC completely severed its ties with India. With UCC's consent, the proceeds of the sale were put in an independent charitable trust to be used to build a hospital in Bhopal.

Again, TDCC had no ties to the Bhopal plant at the time of tragedy. Many years after UCC had sold its stock in UCIL, Dow acquired the UCC's shares in 2001. And given that the 1989 settlement UCC had entered into with the Government of India had been finalized and, at that point, re-affirmed by the Indian Supreme Court, there is no basis for holding TDCC accountable now.

What is the basis for The Dow Chemical Company's (TDCC) belief that the Curative Petition is improper?

Putting aside the Government of India's failure to meet the procedural requirements for filing a Curative Petition, by filing the petition to reopen the settlement of the Bhopal gas disaster, some 21 years after the settlement, the Government is renegeing on the 1989 agreement it negotiated and signed with Union Carbide Corporation (UCC) and its Indian subsidiary, Union Carbide India Limited (UCIL). That agreement was recorded and approved by the India Supreme Court in 1989 and has since been twice reviewed and validated (1991 and 2007) in the face of challenges very similar to what is now brought by the Government of India. In rejecting previous attacks on the settlement agreement, the India Supreme Court has described the agreement as fair, just, appropriate – and final. Given these facts, the Government's decision to renege on the settlement agreement is a serious breach of its obligations to respect and observe the rule of law.

Not only is it improper to reopen the settlement agreement with regard to UCC, but it is even more inappropriate to try to impose liability for the Bhopal tragedy on TDCC given that TDCC did not become a shareholder in UCC until 2001, some 17 years after the event and 12 years after UCC and UCIL had settled the matter with the full approval of the India Supreme Court. The fact is that TDCC had no connection whatsoever to the tragedy or its aftermath.

Thirty years after the tragedy of the 1984 gas leak in Bhopal, this terrible event continues to evoke strong emotions in some. But India is a country committed to justice, fairness and the rule of law. Allowing the understandable human emotions evoked by the tragedy



to do away with these principles, as the Curative Petition seeks to do, is not only wrong, but it sends an unfortunate message that the Indian government does not honor the rule of law or its own commitments. Its actions here will inevitably lead to reluctance by parties in the future to voluntarily resolve and compromise controversies with the Government of India and erosion of confidence in investing in India's vibrant economy.

The attempt to rewrite the settlement agreement to obtain additional funds is improper for the additional reasons that UCC has never been found legally liable for damages resulting from the Bhopal gas release; rather, the settlement was a voluntary undertaking to compromise disputed liability. As the India Supreme Court noted at the time it approved the settlement, in analyzing whether "the settlement is just, fair and adequate," it is "necessary to remind ourselves" that "we should not proceed on the premise that the liability of UCC has been firmly established" because "the suit involves complex questions as to the basis of UCC's liability and assessment of the quantum of compensation in a mass tort action." October 3, 1991 Order, Paragraph 188.

In any event, the Supreme Court of India's issuance of notice on the Curative Petition does not mean that it has agreed that the settlement should be reopened or that it is not legally binding on the parties. Nor does it mean that TDCC, which had no connection to the disaster, can be held responsible for it. Those questions can only be decided by the Supreme Court of India after hearing the positions of all the parties and only in accordance with the law. Principles of the rule of law, due process and fundamental fairness should lead the Court to reject the relief sought in the Curative Petition on its merits – just as it did in 1991, and again in 2007, when essentially the same grounds were presented by certain NGOs to justify renegeing on the agreement. Indeed, the Government of India itself defended the settlement as fair and appropriate against both of those challenges, and the Welfare Commissioner – the Government of India office charged with administering the settlement fund – has continued to defend the fairness and finality of the settlement agreement as recently as November 2010.

What is the amount requested in the Curative Petition, and does it include the \$470 Million that was already paid by Union Carbide (UCC) and Union Carbide India Limited (UCIL) to settle the claims?

We understand that the Government of India is asking for a judicially imposed enhancement of the 1989 Settlement Agreement in amounts ranging from \$1.2 billion to \$1.6 billion. We further understand that the amounts sought do not contemplate return of the \$470 million previously paid by UCC and UCIL to settle the claims rather than



litigate them in the courts of India and, instead, are in addition to that amount. None of these requests are appropriate or supported by any principle of law.

What portions of the amount sought is being sought from The Dow Chemical Company (TDCC) , from Union Carbide (UCC) and from other parties?

The Curative Petition appears to be directed to all the named parties – UCC, TDCC, Eveready Industries India Limited and its parent company, MacLeod Russel India Limited -- without an allocation among them.

Why did the Government of India suddenly reverse its longstanding position that the 1989 settlement was fair and final?

The Government's sudden reversal is inexplicable for a number of reasons. In 1991, when the India Supreme Court rejected attempts to reopen the 1989 Settlement, the proponents of reopening the 1989 settlement at that time used similar arguments to those that we understand are now set forth by the Government in the current request for a Curative Petition. A second collateral attack was made on the Settlement in 2006 by NGO's. Once again, the Government of India defended the settlement and the India Supreme Court held in 2007 that "it [re-opening] cannot be done and the said issue has been decided by this court."

It is instructive (and it was entirely appropriate) that the Government of India opposed the 2006 attempt to reopen the 1989 settlement, stating in an affidavit dated October 26, 2006, that "the validity of the settlement by no stretch of interpretation can be questioned at this stage as each and every claimant has got compensation as per law and his entitlement," that "by no logic and reason is it open to say even for a moment that the justness or determination [of compensation] is impaired," and that "[t]he application filed by the applicants is frivolous and may be dismissed with heavy costs." Additionally, in November 2010, the affidavit of the office of Welfare Commissioner – the government office charged with administering the settlement – reaffirmed, using the same language the Government used in 2006, that all those legitimately affected had been paid, including people who were merely present in the area and not injured.

Nothing has changed that would justify the Union of India's change in position.



What are the next steps for the Curative Petition?

In 2011 The Dow Chemical Company (TDCC) and Union Carbide Corporation (UCC) on their own initiative filed their respective responses to the Curative Petition and to various applications filed in the matter by NGOs who are seeking to intervene in the matter. No schedule was been set for the filing of these or other responses. No hearing before the India Supreme Court has ever been set. The Government of India has not filed any responses to either TDCC or UCC's pleadings, despite being requested to do so by the Indian Supreme Court.

Some say that the amount of funding needed to help survivors and their families was underestimated in the initial settlement. Is that so, and if more money is needed, will it come from The Dow Chemical Company (TDCC) or Union Carbide (UCC)?

Putting aside that TDCC had nothing to do with the 1984 tragedy and was not a party to the 1989 agreement, the Supreme Court of India has previously considered and rejected the argument that additional funds might be required by any parties to the settlement agreement. The settlement of the \$470 million, which ultimately resulted in payouts to victims of nearly double that amount, was negotiated between the Government of India, UCC and Union Carbide India Limited (UCIL) and approved by the Supreme Court of India. In 1989, 1991 and 2007, the Court considered the adequacy of the settlement, ruling each time that it was adequate. In its 1991 reaffirmation of the 1989 Bhopal settlement, the Court required that the Government of India be responsible for any potential shortfall in the settlement account (Page 682, paragraph 198 of the Court's ruling of order dated October 3, 1991) and for acquiring a medical insurance policy to cover 100,000 people who might later develop symptoms shown to have resulted from being exposed during the gas release (Pages 684-686, paragraph 205-208, order dated October 3, 1991).

Indeed, as recently as 2006, the Government of India filed an affidavit with the India Supreme Court asserting that the settlement was appropriate and reasonable and that it should not be revisited. Its 2007 decision, the India Supreme Court agreed with this view. At that time, it was noted that the actual amount awarded to individuals and families had been higher than prescribed, with no new claimants stepping forward. In fact, the Government of India, through its Welfare Commissioner, reaffirmed the fairness and completeness of the 1989 settlement agreement and its implementation in November 2010.



Was the Government of India right to attempt to re-open the 1989 Bhopal settlement and name The Dow Chemical Company (TDCC) as a liable party?

No. The India Supreme Court, the highest court in the land, reviewed and deemed just and fair the 1989 settlement with the Government of India, Union Carbide Corporation (UCC) and Union Carbide India Limited (UCIL) and subsequently reaffirmed the adequacy of the settlement in 1991 and again in 2007.

TDCC cannot be liable for the additional reasons that TDCC acquired the shares of UCC in 2001, more than 10 years after the 1989 settlement was reached and re-examined (1991), and that TDCC never had any connection to the Bhopal plant, which was owned and operated by UCIL.

In today's global economy, it is critical that the rule of law be honored and upheld and that the certainty of laws and their application be guaranteed. We believe that as foreign governments enter into settlements with multinational corporations, honoring the terms of agreements – which are recognized as fair and just by their own courts – will be critical to the spirit of international trade and business.

What role has the Union of India played in the aftermath of the Bhopal Tragedy?

In its 1991 reaffirmation of the 1989 Bhopal settlement, the India Supreme Court required the Union of India to make up for any potential shortfall in the settlement amount (See page 682, paragraph 198 of the Court's ruling on Bhopal.com) and to acquire a medical insurance policy to cover 100,000 people who might later develop symptoms shown to have resulted from being exposed during the gas release (See pages 684-686, paragraph 205-208). The Union of India did not challenge these directives from the Supreme Court when this ruling was issued. In fact, the 1991 Review Petitions challenging the settlement were filed by NGO Groups and not by the Union of India.

After the case was settled, the settlement funds were paid to the Union of India and the Government devised and administered the compensation scheme, including determining the validity of the claims it received.

As it happens, there was no shortfall. In fact, the settlement fund was sufficient to compensate all claimants double the amounts the Government of India set as fair compensation. Therefore, any question regarding additional payments to those who died, sustained injuries or continue to suffer health effects as a result of the Bhopal tragedy should be directed to the Government of India.



The Union of India has also filed a “transfer petition” related to the environmental litigation that is pending in the Madhya Pradesh High Court against Union Carbide (UCC) and The Dow Chemical Company (TDCC). What is this petition about?

The Union of India is a respondent in the Bhopal plant site environmental litigation, as is the state government, in addition to the corporate parties UCC, TDCC and Union Carbide India Limited (UCIL). The claims in that case, related to cleaning-up the plant site, are unrelated to the gas release and were not part of the UCC-UCIL settlement in 1989. Nevertheless, the Government of India now seeks to combine this entirely separate lawsuit with the Government's Curative Petition related to the 1989 settlement, and is requesting its transfer to the Supreme Court – despite the fact that the claims and parties are different, and despite the fact that the Madhya Pradesh High Court has been actively managing this litigation for the past ten years. TDCC believes that a transfer is inappropriate, legally improper, and will unnecessarily conflate the historic issues of the settlement's validity with the unresolved and unrelated issue of clean-up of the plant site. Again, responsibility for clean-up of the Bhopal plant site lies with the state and central governments.

How will The Dow Chemical Company (TDCC) and Union Carbide (UCC) respond to the Curative Petition in further proceedings before the India Supreme Court?

In 2011, UCC filed responses which vigorously oppose the requested Curative Petition and related applications based on the rule of law, the fairness and finality of the settlement, due process and other grounds. In 2011, TDCC also opposed the Curative Petition on the ground that the Indian court has no jurisdiction over it and that jurisdiction based on its relationship to UCC is improper because the two are separate corporations. TDCC was not a party to the settlement agreement or the ensuing judgement, is not responsible for UCC or Union Carbide India Limited's (UCIL) obligations, and had no involvement in the 1984 tragedy or its aftermath.

In summary, this settlement has been held to be a fair and adequate compromise since 1989. The settlement has been affirmed by the Indian Supreme Court twice and as recently as 2007, several years after all settlement amounts were paid to qualifying claimants. TDCC is outside the ambit of the court's jurisdiction. It had no ties to the Bhopal plant, which was owned by UCIL at the time of tragedy. TDCC acquired UCC's shares in 2001, many years after UCC sold its stock in UCIL, and did not merge with UCC. There is no basis for holding Dow accountable.



What is the legal precedent for this type of activity?

None. The request in the Curative Petition is so contrary to law and due process, that even under India's own legal procedures, it cannot be seen as a valid claim. The Curative Petition mechanism is a rarely used provision in Indian law permitting revisiting final judgments only where the judgment was the result of an error or breach of the principles of natural justices due to a mistake by the court and where certain other procedural requirements have been met. Here, the India Supreme Court made no mistake in approving (and reapproving) the 1989 settlement, nor have the other procedural requirements been met.

Even if the requested Curative Petition were somehow resolved in the Union of India's favor (contrary to the long adherence by India's highest court to the rule of law and due process), it should not properly result in a judgment for money. A Curative Petition in India is designed to "unwind" a legal judgment entered as a result of procedural error or mistake. Here, such a result would effectively reinstate the litigation. For that reason, were the Supreme Court of India to permit the Government to renege on the agreement, the proper result would be to return the money with interest to Union Carbide Corporation (UCC) and Union Carbide India Limited and to require the Government to prove UCC's liability before any money judgment could be ordered. But such a result under these circumstances would be a violation of due process given the underlying events occurred thirty years ago. Remember that in 1991 the Indian Supreme Court stated that "we should not proceed on the premise that the liability of UCC has been firmly established" because "the suit involves complex questions as to the basis of UCC's liability and assessment of the quantum of compensation in a mass tort action." October 3, 1991 Order, Paragraph 188.

Has The Dow Chemical Company (TDCC) accrued any liability for this on its balance sheet?

No. We do not believe that an accrual is appropriate or necessary since the demands in the petition are so outside the law. Neither Union Carbide Corporation nor TDCC has ever been found liable in the Bhopal tragedy, and this Curative Petition should not change that even if it were accepted by India's Supreme Court.



Does The Dow Chemical Company (TDCC) have insurance / other protection for this type of claim?

That isn't necessary because TDCC has no liability for the Bhopal incident. TDCC never owned or operated the Bhopal plant and didn't acquire Union Carbide Corporation until many years after the settlement had been executed.

What does the Bhopal issue and related litigation mean for The Dow Chemical Company (TDCC) businesses in the region and does this change our position regarding growth in the region?

TDCC's affiliated companies continue to experience double-digit growth in India and employ approximately 900 employees in India. TDCC's presence in India began with the Polychem Limited joint venture in 1957. Dow India continues to thrive fifty years later with a strong manufacturing and operations presence in ten locations across the country, supporting key applications for products in industries as diverse as paints & coatings, water, pharmaceuticals, automotive, alternative energies, construction and agriculture. (Further information on Dow's business in India can be found at www.dow.in.) These recent proceedings have not changed the facts, our view on the applicable law or our position regarding Bhopal. For the reasons discussed above, we do not believe that Bhopal or the 2010 request for a Curative Petition will have any financial, operational or reputational impact on Dow's business opportunities in India or elsewhere in the world, and we will continue to oppose efforts to implicate Dow in the Bhopal matter.

When will Union Carbide (UCC) have finality with respect to the Bhopal Settlement Agreement?

This was finally, fully and fairly resolved in 1989, and the adequacy of the settlement was confirmed by the Indian Supreme Court in 1991 and 2007.